

↑ "asked or encouraged"
- less than 10
- "appropriate justification"
↓

QUESTIONS

Firings

I am deeply concerned about the recent firings of qualified and demonstrably capable U.S. Attorneys and their replacement with individuals who lack the traditional qualifications for the position [and instead have a deeply political, partisan background]. The perception of many is that this reveals a growing politicization of the work of federal prosecutors. How can you explain this action?

"no basis"

The Attorney General's actions are unlike anything that has occurred before. Never before [except in rare instances of misconduct or for other significant cause] have we seen the type of turnover now in progress, where the Attorney General, not the President, is asking mid-term that demonstrably capable U.S. Attorneys submit their resignations. Why did he do it? Why now?

"not a cause"

Were they fired because you wanted U.S. Attorneys who are more politically and behaviorally aligned with your priorities?

Were they fired because of public corruptions or other sensitive cases that were brought or are in process?

Were they fired because of a Congressman's criticism?

Were they fired just to give another person the chance to serve and have the high-profile platform of serving as a U.S. Attorney?

These firings leave the appearance that there is an ongoing effort by the Attorney General to consolidate power over USAOs and insulate their actions from the scrutiny of Congress. I don't know how else to explain why a U.S. Attorney like Bud Cummins would be terminated after receiving sterling evaluations and be replaced by a political adviser who doesn't have nearly the same qualifications. How do you explain it?

- ① ???
- ② Feinstein letter →
- ③ AG letter to Puzos
- ④ member issues
- ⑤ De Gorbelle

Hasn't the purging of qualified U.S. Attorneys for political reasons had a devastating impact on the morale of Assistant U.S. Attorneys?

Hasn't the dismissal of competent U.S. Attorneys posed risks to ongoing law enforcement initiatives? Hasn't replacement with interim U.S. Attorneys unfamiliar with local law enforcement priorities posed risks to ongoing investigations and prosecutions?

Hasn't the unwarranted firing of strong, independent U.S. Attorneys created cynicism about the role of politics in all prosecutorial decisions?

Do you regret ... the firing of Lam resignation

Feinstein letter

Why was Carol Lam fired?

Because of her political views?

Because her office was in the middle of a high-profile public corruption investigation? ["We do not doubt that removing Ms. Lam from the U.S. Attorneys' office in San Diego now will disrupt this investigation."]

Because Rep. Issa and others have criticized the office's immigration enforcement?

Because you wanted to give a political insider the chance to serve?

Was Carol Lam a good prosecutor? What did her fellow U.S. Attorneys think of her?

Griffin appointment

Why was Tim Griffin appointed [over the objection of Sen. Pryor]?

In evaluating candidates for interim appointment, do you think the Department of Justice should use pregnancy and motherhood as conditions to deny appointment? Is it true that the FAUSA was not appointed because she was on maternity leave?

The amendment to the PATRIOT Act that permits the Attorney General to appoint U.S. Attorneys, but the Department did not articulate any national security or law enforcement need for appointing Griffin over the FAUSA. Why? Doesn't that violate the spirit of the law?

The Attorney General testified that the Administration is committed to having a Senate-confirmed U.S. Attorney in every district. What about Eastern Arkansas? What about Maine? What about S.D.W.V.?

Will the President nominate Griffin over Sen. Pryor's objection? Will the AG recommend that he do so?

What if Pryor is never nominated?

What if Pryor is nominated, but not confirmed?

Feinstein bill

Chief Judges of a district often have a much better sense of the operation of the USAO and federal agencies in the jurisdiction than those who are thousands of miles away in Washington, D.C. Aren't they in a better position to select an interim U.S. Attorney?

Court appointments are less likely to be viewed as political favors, don't you agree?

District courts are more likely to have the best operations of the justice system in mind when he or she appoints an interim U.S. Attorney, don't you agree? [After all, district courts appoint counsel, federal defenders, magistrates, etc.]

What incentive does the Executive Branch have to nominate a successor in a timely fashion [and give the Senate the opportunity to fulfill its constitutional responsibility of evaluating and deciding whether to confirm the candidate]?

problem court appointments?

↓

DoJ suggest return to old law?



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 31, 2007

The Honorable Mark Pryor
United States Senate
257 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Pryor:

This is in response to your letter to the Attorney General dated January 11, 2007, regarding the Attorney General's appointment of J. Timothy Griffin to serve as interim United States Attorney for the Eastern District of Arkansas.

As the Attorney General informed you in his telephone conversations with you on December 13, 2006, and December 15, 2006, Mr. Griffin was chosen for appointment to serve as interim United States Attorney because of his excellent qualifications. To be clear, Mr. Griffin was not chosen because the First Assistant United States Attorney was on maternity leave and therefore was not able to serve as your letter states. As you know, Mr. Griffin has federal prosecution experience both in the Eastern District of Arkansas and in the Criminal Division in Washington, D.C. During his service in the Eastern District of Arkansas, Mr. Griffin established that district's successful Project Safe Neighborhoods initiative to reduce firearms-related violence. In addition, Mr. Griffin has served for more than a decade in the U.S. Army Reserve, Judge Advocate General's Corps, for whom he has prosecuted more than 40 criminal cases, including cases of national significance. Mr. Griffin's military experience includes recent service in Iraq, for which he was awarded the Combat Action Badge and the Army Commendation Medal. Importantly, Mr. Griffin is a "real Arkansan" with genuine ties to the community. Based on these qualifications, Mr. Griffin was selected to serve as interim United States Attorney.

As the Attorney General also has stated to you, the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts. At no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

OAG000000403

The Eastern District of Arkansas is not different. As the Attorney General stated to you again two weeks ago, in a telephone conversation on January 17, 2007, the Administration is committed to having a Senate-confirmed United States Attorney in that district too. That is why the Administration has consulted with you and Senator Lincoln for several months now regarding possible candidates for nomination, including Mr. Griffin. That is why the Attorney General has sought your views as to whether, if nominated, you would support Mr. Griffin's confirmation. The Administration awaits your decision.

If you decide that you would support Mr. Griffin's confirmation, then the President's senior advisors (after taking into account Senator Lincoln's views) likely would recommend that the President nominate him. With your support, Mr. Griffin almost certainly would be confirmed and appointed. We are convinced that, given his strong record as a federal prosecutor and as a military prosecutor, Mr. Griffin would serve ably as a Senate-confirmed United States Attorney. If, in contrast, you decide that for whatever reason you will not support Mr. Griffin's confirmation, then the Administration looks forward to considering any alternative candidates for nomination that you might put forward. In any event, your views (and the views of Senator Lincoln) will be given substantial weight in determining what recommendation to make to the President regarding who is nominated.

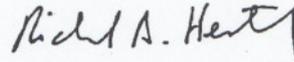
Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Contrary to your letter, nothing in the text or history of the statute even suggests that the Attorney General should articulate a national security or law enforcement need for making an interim appointment. Because the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time

Letter to the Honorable Mark Pryor
Page 3

that a United States Attorney vacancy has arisen, the President either has made a nomination or – as with the Eastern District of Arkansas – the Administration is working, in consultation with home-State Senators, to select a candidate for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Blanche L. Lincoln

Enclosure

OAG000000405

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 13 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 4 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 8 of the 13 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 12 times since the authority was amended in March 2006.

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 8 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;

- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

DIANNE FEINSTEIN
CALIFORNIA



COMMITTEE ON APPROPRIATIONS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

June 15, 2006

Honorable Alberto Gonzales
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

During our meeting last week you asked if I had any concerns regarding the U.S. Attorneys in California. I want to follow up on that point and raise the issue of immigration related prosecutions in Southern California.

It has come to my attention that despite high apprehensions rates by Border Patrol agents along California's border with Mexico, prosecutions by the U.S. Attorney's Office Southern District of California appear to lag behind. A concern voiced by Border Patrol agents is that low prosecution rates have a demoralizing effect on the men and women patrolling our Nation's borders.

It is my understanding that the U.S. Attorney's Office Southern District of California may have some of the most restrictive prosecutorial guidelines nationwide for immigration cases, such that many Border Patrol agents end up not referring their cases. While I appreciate the possibility that this office could be overwhelmed with immigration related cases; I also want to stress the importance of vigorously prosecuting these types of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught. I am concerned that lax prosecution can endanger the lives of Border Patrol agents, particularly if highly organized and violent smugglers move their operations to the area.

Therefore, I would appreciate responses to the following issues:

- Please provide me with an update, over a 5 year period of time, on the numbers of immigration related cases accepted and prosecuted by the

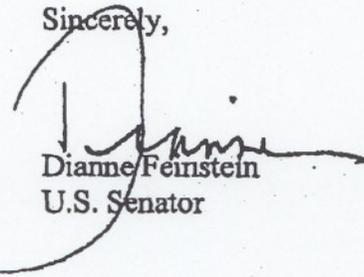
U.S. Attorney Southern District of California, particularly convictions under sections 1324 (alien smuggling), 1325 (improper entry by an alien), and 1326 (illegal re-entry after deportation) of the U.S. Code.

- What are your guidelines for the U.S. Attorney's Office Southern District of California? How do these guidelines differ from other border sectors nationwide?

By way of example, based on numbers provided to my office by the Bureau of Customs and Border Protection and the U.S. Sentencing Commission, in FY05 Border Patrol agents apprehended 182,908 aliens along the border between the U.S. and Mexico. Yet in 2005, the U.S. Attorney's office in Southern California convicted only 387 aliens for alien smuggling and 262 aliens for illegal re-entry after deportation. When looking at the rates of conviction from 2003 to 2005, the numbers of convictions fall by nearly half.

So I am concerned about these low numbers and I would like to know what steps can be taken to ensure that immigration violators are vigorously prosecuted. I appreciate your timely address of this issue and I look forward to working with you to ensure that our immigration laws are fully implemented and enforced.

Sincerely,



Dianne Feinstein
U.S. Senator



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 23, 2006

The Honorable Dianne Feinstein
United States Senator
Washington, D.C. 20510

Dear Senator Feinstein:

This is in response to your letter dated June 15, 2006, to the Attorney General regarding the issue of immigration-related prosecutions in the Southern District of California. We apologize for any inconvenience our delay in responding may have caused you.

Attached please find the information you requested regarding the number of criminal immigration prosecutions in the Southern District of California. You also requested intake guidelines for the Southern District of California United States Attorney's Office. The details of any such prosecution or intake guidelines would not be appropriate for public release because the more criminals know of such guidelines, the more they will conform their conduct to avoid prosecution.

Please know that immigration enforcement is critically important to the Department and to the United States Attorney's Office in the Southern District of California. That office is presently committing fully half of its Assistant United States Attorneys to prosecute criminal immigration cases.

The immigration prosecution philosophy of the Southern District focuses on deterrence by directing its resources and efforts against the worst immigration offenders and by bringing felony cases against such defendants that will result in longer sentences. For example, although the number of immigration defendants who received prison sentences of between 1-12 months fell from 896 in 2004 to 338 in 2005, the number of immigration defendants who received sentences between 37-60 months rose from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months rose from 21 to 77.

Prosecutions for alien smuggling in the Southern District under 8 U.S.C. sec. 1324 are rising sharply in Fiscal Year 2006. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005.

OAG000000412

The Honorable Dianne Feinstein

Page Two

The effort to obtain higher sentences for the immigration violators who present the greatest threat to the community also results in more cases going to trial and, consequently, the expenditure of more attorney time. In FY 2004, the Southern District tried at least 37 criminal immigration cases; in FY 2005, the District more than doubled that number and tried over 80 criminal immigration cases.

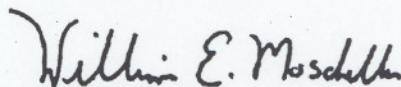
The Southern District has also devoted substantial resources to investigating and prosecuting border corruption cases which pose a serious threat to both national security and continuing immigration violations. For example, in the past 12 months, the district has investigated and prosecuted seven corrupt Border Patrol agents and Customs and Border Patrol officers who were working with alien smuggling organizations. These investigations and prosecutions typically have time-consuming financial and electronic surveillance components.

Finally, the United States Attorneys' Offices nationwide have been vigorously prosecuting alien smuggling. Data on alien smuggling prosecutions from the Executive Office for United States Attorneys' database shows that these cases have risen steadily during the last three years. In Fiscal Year 2003, there were 2,015 alien smuggling cases filed under 8 U.S.C. sec. 1324. In Fiscal Year 2004, there were 2,451 such cases, and in Fiscal Year 2005, there were 2,682.

Additionally, the Departments of Justice and Homeland Security recently announced additional resources to enhance the enforcement of immigration laws and border security along the Southwest Border. A copy of the press release is enclosed.

We appreciate your interest in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,



William E. Moschella
Assistant Attorney General

Attachment

OAG000000413

United States Attorneys - Criminal Caseload Statistics ¹
 Southern District of California
 Standard Sentencing Courts
 Immigration

Sentencing									
Fiscal Year ²	Defendants in Cases Filed	Defendants in Cases Terminated	Total Defendants Guilty	Number of Guilty Defendants Not Sentenced To Prison	Percent Change	Number of Guilty Defendants Sentenced To Prison	Percent Change	Percent of Guilty Defendants Sentenced To Prison	
93	357	340	324	18		306		94.4%	
94	290	378	357	22	22.2%	335	9.5%	93.8%	
95	884	850	841	50	127.3%	791	136.1%	94.1%	
96	1,425	1,341	1,318	180	280.0%	1,128	42.6%	85.6%	
97	1,849	1,892	1,852	302	58.8%	1,550	37.4%	83.7%	
98	2,093	1,811	1,741	156	-48.3%	1,585	2.3%	91.0%	
99	1,778	1,837	1,737	82	-47.4%	1,655	4.4%	95.3%	
00	2,223	2,070	1,942	62	-24.4%	1,880	13.6%	96.8%	
01	1,988	2,112	1,877	80	28.0%	1,897	0.9%	96.0%	
02	2,059	1,877	1,759	74	-7.5%	1,685	-11.2%	95.8%	
03	2,558	2,497	2,395	92	24.3%	2,303	36.7%	96.2%	
04	2,632	2,588	2,408	36	-80.9%	2,370	2.9%	98.5%	
05	1,514	1,732	1,551	49	38.1%	1,502	-38.6%	96.8%	
06	1,580	1,492	1,372	40	-18.4%	1,332	-11.3%	97.1%	
Average	1,686	1,630	1,541	90	28.5%	1,451	17.5%	93.9%	

Sentencing																
Fiscal Year ²	Number of Guilty Defendants Sentenced To Prison	Defendants Sentenced to Prison 1-12 Months	Percent of Defendants Sentenced to Prison 1-12 Months	Defendants Sentenced to Prison 13-24 Months	Percent of Defendants Sentenced to Prison 13-24 Months	Defendants Sentenced to Prison 25-36 Months	Percent of Defendants Sentenced to Prison 25-36 Months	Defendants Sentenced to Prison 37-60 Months	Percent of Defendants Sentenced to Prison 37-60 Months	Defendants Sentenced to Prison 61+ Months	Percent of Defendants Sentenced to Prison 61+ Months	Defendants Sentenced to Life in Prison	Percent of Defendants Sentenced to Life in Prison	Defendants Sentenced to Death	Percent of Defendants Sentenced to Death	
93	306	83	20.8%	223	72.8%	10	3.3%	5	1.6%	5	1.6%	0	0.0%	0	0.0%	
94	335	41	12.2%	281	83.8%	4	1.2%	4	1.2%	5	1.5%	0	0.0%	0	0.0%	
95	791	54	6.8%	704	89.0%	8	0.8%	18	2.0%	11	1.4%	0	0.0%	0	0.0%	
96	1,128	146	12.9%	904	80.1%	16	1.4%	45	4.0%	17	1.5%	0	0.0%	0	0.0%	
97	1,550	457	29.5%	994	64.1%	28	1.8%	32	2.1%	39	2.5%	0	0.0%	0	0.0%	
98	1,585	404	25.5%	718	45.3%	340	21.5%	67	4.2%	56	3.5%	0	0.0%	0	0.0%	
99	1,655	374	22.6%	474	28.6%	828	38.0%	100	6.0%	78	4.7%	0	0.0%	0	0.0%	
00	1,880	755	40.2%	573	30.5%	496	26.4%	42	2.2%	14	0.7%	0	0.0%	0	0.0%	
01	1,897	931	48.1%	580	30.6%	323	17.0%	50	2.6%	13	0.7%	0	0.0%	0	0.0%	
02	1,685	747	44.3%	561	33.3%	326	19.3%	38	2.3%	13	0.8%	0	0.0%	0	0.0%	
03	2,303	1,035	44.9%	785	34.1%	418	18.2%	52	2.3%	13	0.6%	0	0.0%	0	0.0%	
04	2,370	898	37.8%	745	31.4%	592	25.0%	118	4.9%	21	0.9%	0	0.0%	0	0.0%	
05	1,502	338	22.5%	512	34.1%	329	21.9%	248	16.4%	77	5.1%	0	0.0%	0	0.0%	
06	1,332	384	28.8%	444	33.3%	188	14.0%	278	20.7%	42	3.2%	0	0.0%	0	0.0%	
Average	1,451	473	32.6%	607	41.8%	265	18.2%	78	5.4%	29	2.0%	0	0.0%	0	0.0%	

¹ Caseload data extracted from the United States Attorneys' Case Management System.

² FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

0AG000000414

United States Attorneys – Criminal Caseload Statistics¹
 Southern District of California
 Standard Matter and Case Counts
 Immigration

OAG000000415

Cases & Defendants – Filed, Pending, & Terminated															
Fiscal Year ²	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
93	330		357		1.08	217		284		1.31	308		340		1.10
94	272	-17.6%	290	-18.8%	1.07	137	-36.9%	191	-32.7%	1.39	345	12.0%	378	10.6%	1.09
95	851	212.9%	884	204.8%	1.04	155	13.1%	221	15.7%	1.43	829	140.3%	850	126.1%	1.03
96	1,367	80.6%	1,425	61.2%	1.04	227	46.5%	300	35.7%	1.32	1,291	55.7%	1,341	57.8%	1.04
97	1,853	35.6%	1,949	36.8%	1.05	259	14.1%	352	17.3%	1.36	1,819	40.9%	1,892	41.1%	1.04
98	1,918	3.5%	2,093	7.4%	1.09	479	84.9%	826	77.8%	1.31	1,695	-6.6%	1,811	-4.3%	1.07
99	1,664	-13.2%	1,778	-15.1%	1.07	448	-6.5%	566	-6.6%	1.26	1,687	-0.5%	1,837	1.4%	1.09
00	2,116	27.2%	2,223	25.0%	1.05	501	34.2%	710	25.4%	1.18	1,961	18.2%	2,070	12.7%	1.06
01	1,907	-9.9%	1,988	-10.8%	1.04	498	-17.5%	580	-18.3%	1.17	2,008	2.3%	2,112	2.0%	1.05
02	1,821	0.7%	2,059	3.6%	1.07	534	27.8%	781	31.2%	1.20	1,762	-11.2%	1,877	-11.1%	1.05
03	2,463	28.2%	2,558	24.2%	1.04	739	16.6%	818	7.5%	1.11	2,359	32.4%	2,497	33.0%	1.06
04	2,527	2.6%	2,632	2.9%	1.04	816	10.4%	916	12.2%	1.13	2,506	6.2%	2,588	3.8%	1.03
05	1,441	-43.0%	1,514	-42.5%	1.05	645	-21.0%	714	-22.2%	1.11	1,626	-35.1%	1,732	-33.1%	1.07
06	1,432	-0.6%	1,580	4.4%	1.10	672	4.2%	778	8.7%	1.15	1,412	-13.2%	1,492	-13.9%	1.06
Average	1,576	22.1%	1,666	21.6%	1.06	466	13.1%	558	11.4%	1.20	1,545	18.4%	1,630	17.4%	1.05

¹ Caseload data extracted from the United States Attorneys' Case Management System.

² FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

United States Attorneys – Criminal Caseload Statistics¹
 Southern District of California
 Standard Disposition Counts
 Immigration

Cases & Defendants Tried									
Fiscal Year ²	Cases Terminated	Defendants Terminated	Cases Disposed of by Trial	Percent Change	Cases Tried as Percent of Those Terminated	Defendants Disposed of by Trial	Percent Change	Defendants Tried as Percent of Those Terminated	Average Number of Defendants Per Case Tried
93	308	340	5		1.6%	8		1.8%	1.20
94	345	378	7	40.0%	2.0%	7	16.7%	1.8%	1.00
95	829	850	7	0.0%	0.8%	7	0.0%	0.8%	1.00
96	1,291	1,341	13	85.7%	1.0%	13	85.7%	1.0%	1.00
97	1,819	1,882	7	-46.2%	0.4%	9	-30.8%	0.5%	1.29
98	1,695	1,811	39	457.1%	2.3%	42	366.7%	2.3%	1.08
99	1,687	1,837	52	33.3%	3.1%	54	26.6%	2.9%	1.04
00	1,961	2,070	17	-67.3%	0.9%	20	-63.0%	1.0%	1.18
01	2,006	2,112	42	147.1%	2.1%	47	135.0%	2.2%	1.12
02	1,782	1,877	33	-21.4%	1.9%	35	-25.5%	1.9%	1.06
03	2,358	2,487	29	-12.1%	1.2%	30	-14.3%	1.2%	1.03
04	2,506	2,588	42	44.8%	1.7%	42	40.0%	1.8%	1.00
05	1,626	1,732	89	111.8%	5.5%	91	116.7%	5.3%	1.02
06	1,412	1,492	50	-43.8%	3.5%	50	-45.1%	3.4%	1.00
Average	1,545	1,630	31	56.1%	2.0%	32	47.0%	2.0%	1.05

Defendants - Guilty, Acquitted, Dismissed, Other Terminations														
Fiscal Year ²	Total Defendants Terminated	Total Defendants Guilty	Percent Change	Defendants Found Guilty	Defendants Found Guilty as Percent of Total Guilty	Defendants Who Pled Guilty	Defendants Who Pled Guilty as Percent of Total Guilty	Conviction Rate	Defendants Acquitted	Percent Change	Defendants Dismissed	Percent Change	Other Terminated Defendants	Percent Change
93	340	324		8	1.9%	318	98.1%	95.3%	0		16		0	
94	378	357	10.2%	7	2.0%	350	98.0%	94.8%	0		19	18.8%	0	
95	850	841	135.6%	7	0.8%	834	99.2%	98.9%	0		9	-52.6%	0	
96	1,341	1,318	56.7%	12	0.9%	1,306	99.1%	96.3%	1		22	144.4%	0	
97	1,892	1,852	40.5%	7	0.4%	1,845	99.8%	97.9%	3	200.0%	35	59.1%	2	
98	1,811	1,741	-6.0%	40	2.3%	1,701	97.7%	96.1%	2	-33.3%	68	94.3%	0	
99	1,837	1,737	-0.2%	49	2.8%	1,688	97.2%	94.6%	5	150.0%	85	36.7%	0	
00	2,070	1,942	11.8%	19	1.0%	1,923	99.0%	93.8%	2	-60.0%	128	32.6%	0	
01	2,112	1,977	1.8%	45	2.3%	1,932	97.7%	93.8%	2	0.0%	132	4.8%	1	
02	1,877	1,759	-11.0%	34	1.9%	1,725	98.1%	93.7%	1	-50.0%	118	-12.1%	1	0.0%
03	2,497	2,395	36.2%	28	1.2%	2,367	98.8%	95.9%	2	100.0%	100	-13.8%	0	
04	2,588	2,408	0.5%	37	1.5%	2,369	98.5%	93.0%	5	150.0%	170	70.0%	7	
05	1,732	1,551	-35.5%	86	5.6%	1,465	94.5%	89.5%	5	0.0%	174	2.4%	2	-71.4%
06	1,482	1,372	-11.5%	50	3.6%	1,322	96.4%	92.0%	0		116	-33.3%	4	100.0%
Average	1,630	1,541	17.8%	31	2.0%	1,510	98.0%	94.6%	2	50.7%	86	27.2%	1	9.5%

¹ Caseload data extracted from the United States Attorneys' Case Management System.

² FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, JULY 31, 2006
WWW.USDOJ.GOV

AG
(202) 514-2007
TDD (202) 514-1888

Twenty-Five Federal Prosecutors to be Added to U.S./Mexico Border Districts

WASHINGTON – The United States Departments of Justice and Homeland Security announced today additional resources to enhance the enforcement of immigration laws and border security along the Southwest border.

The Department of Justice will add 20 Assistant United States Attorneys (AUSAs) to the five federal law enforcement districts along the border: the Southern District of Texas, the Western District of Texas, the District of Arizona, the District of New Mexico and the Southern District of California.

These 20 AUSAs will prosecute only immigration-related offenses, including alien smuggling, entering the United States without inspection, illegal re-entry, possession of firearms as an alien, illegal employment of undocumented aliens, human trafficking and document fraud. The additional resources will be funded by a \$2 million supplemental appropriation that was requested by the President and approved by Congress. The hiring process will begin immediately.

The Department of Justice's Organized Crime Drug Enforcement Task Force (OCDEF) Program will provide funding for five new AUSAs – one in each of the federal districts along the border – to prosecute drug trafficking organizations responsible for smuggling illegal narcotics across the Southwest border.

In addition to the 25 new prosecutors, in the coming months the Department of Homeland Security (DHS) will also identify several attorneys who will be designated as Special Assistant U.S. Attorneys to prosecute immigration offenses along the Southwest border.

"As a nation of laws, it is important that those who cross our borders illegally or smuggle drugs are prosecuted swiftly and fairly," said Attorney General Alberto R. Gonzales. "These new prosecutors will help ensure that our immigration and drug laws are aggressively enforced."

"We applaud the Attorney General for dedicating these additional resources to help prosecute those criminals and smugglers that create violence along our border and present risks to those living and working in our border communities," said Homeland Security Secretary Michael Chertoff. "DHS will also dedicate additional lawyers to assist U.S. Attorneys and ensure that our nation's laws are enforced."

Including the additional prosecutors, the number of AUSAs in the Southwest border districts has increased 29 percent since 2000, to a total of 561. In the same time frame, the Department of Justice's immigration prosecutions have increased by approximately 40 percent. (About 30 percent of all new criminal cases are for immigration-related crimes, making immigration cases the largest category of cases filed by the United States Attorneys' Offices.) In 2005, over 95 percent of immigration prosecutions resulted in convictions, with approximately 85 percent of convicted defendants serving time in prison.

From fiscal year 2003 to fiscal year 2005, the United States Attorney's Offices in districts along the U.S./Mexico border have seen a 78 percent increase in the number of investigations initiated through OCDETF against sophisticated drug trafficking organizations.

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06-478

Congress of the United States
Washington, DC 20515

January 17, 2007

The Honorable Alberto Gonzales
U.S. Attorney General
Robert F. Kennedy Building
Washington, DC 20530

Dear Mr. Attorney General:

In the last week, we learned that the Administration has asked for the resignation of Carol Lam, United States Attorney for the Southern District of California. Ms. Lam announced yesterday that she has submitted her resignation effective February 15th.

Prior to her appointment as U.S. Attorney, Ms. Lam was a San Diego Superior Court Judge and a career prosecutor. Since her appointment as U.S. Attorney in 2002, we have heard no suggestion that she was either unqualified for the position or that she was guilty of misconduct in her office.

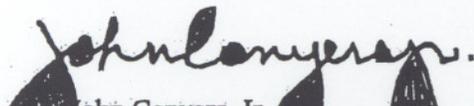
To the contrary, since word of the Administration's effort to remove Ms. Lam surfaced, reports in the San Diego Union-Tribune quote other prosecutors and defense lawyers as being "universally shocked" by her impending dismissal. San Diego's City Attorney called Lam, "the most outstanding U.S. Attorney we've ever had." The head of the FBI office in San Diego called Lam "crucial to the success of multiple ongoing investigations" adding that she "has an excellent reputation and has done an excellent job."

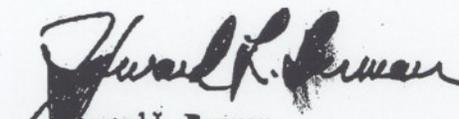
Given this praise and concern for the potential ramifications of her sudden departure, we are perplexed as to why you have chosen to remove Ms. Lam from the U.S. Attorneys' office in San Diego now. The one reason we've heard suggested for her dismissal was a decrease in immigration-related prosecutions, yet in the months of May, June and July of 2006, the U.S. Attorneys' Office in the Southern District of California was one of the top three USAOs in immigration prosecutions, hardly a record that would lead to removal.

At the moment, Ms. Lam is leading an office in the middle of a high-profile public corruption investigation. While the work on this investigation led to the conviction of former-Rep. Cunningham, a number of other corruption probes have grown out of the case and are still pending. We do not doubt that removing Ms. Lam from the U.S. Attorneys' office in San Diego now will disrupt this investigation.

Forcing Ms. Lam's resignation now leaves the appearance that this growing public corruption probe may be part of the Administration's motivation in removing her. If this is untrue, it is vitally important that this perception be corrected, and we ask you to share with us the basis of your request for her resignation.

Sincerely,


John Conyers, Jr.
Chairman
House Committee on the Judiciary


Edward L. Berman
Member
House Committee on the Judiciary



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 16, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. Discussions with United States Attorneys regarding their continued service generally are non-public, out of respect for those United States Attorneys; indeed, a public debate about the United States Attorneys that may have been asked or encouraged to resign only disservices their interests. In any event, please be assured that United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case. United States Attorneys are law

0AG000000420

enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

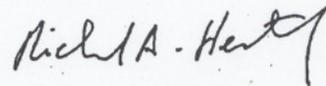
Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed per your request is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed,

Letter to Chairman Leahy and Senator Feinstein
January 16, 2007
Page 3

every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Hertling". The signature is written in a cursive style with a large, stylized initial "R".

Richard A. Hertling
Acting Assistant Attorney General

Enclosure

OAG000000422

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney (Cardona is not a candidate for presidential nomination; a nomination is not yet ready);
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (Massey is not a candidate for presidential nomination; a nomination was made last Congress, but confirmation did not occur);

- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL’S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of nine times since the authority was amended in March 2006. In two of the nine cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA’s 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same

FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick (Dedrick has expressed interest in presidential nomination; nomination is not yet ready).

In one case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen (Cohen is not a candidate for presidential nomination; nomination is not yet ready).

In the five remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).



U.S. Department of Justice

*United States Attorney
Eastern District of Arkansas*

FOR IMMEDIATE RELEASE
December 15, 2006

CONTACT: **Office of Public Affairs,**
202-514-2007

**JUSTICE DEPARTMENT ANNOUNCES APPOINTMENT
OF J. TIMOTHY GRIFFIN AS INTERIM UNITED STATES ATTORNEY
FOR THE EASTERN DISTRICT OF ARKANSAS**

LITTLE ROCK, Ark. — The Justice Department today announced the appointment of J. Timothy Griffin to serve as the interim U.S. Attorney for the Eastern District of Arkansas. Mr. Griffin will serve under an Attorney General appointment. He will succeed Bud Cummins, who will resign on December 20, 2006, to pursue opportunities in the private sector.

Mr. Griffin currently serves as a Special Assistant U.S. Attorney in the Eastern District of Arkansas. He recently completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.

In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.

Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee.

News Release
U.S. Attorney's Office
12/15/2006

Page 1 of 2

0AG000000426

From 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases. He also organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.

Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.

Mr. Griffin graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.

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112/502 DA

257 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-2353

500 PRESIDENT CLINTON AVENUE
SUITE 401
LITTLE ROCK, AR 72201
(501) 324-6336
TOLL FREE: (877) 259-8602
<http://pryor.senate.gov>

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SMALL BUSINESS AND
ENTREPRENEURSHIP

United States Senate

WASHINGTON, DC 20510

January 11, 2007

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Gonzales:

I am writing this letter to express my displeasure regarding your appointment of Tim Griffin as Interim U.S. Attorney for the Eastern District of Arkansas. As you will recall, we discussed this matter in two telephone calls (Wednesday December 13, 2006, and December 15, 2006) in which I informed you of my reservations.

First, it is clear (from events that occurred in July and August 2006), that there was an attempt to force then U.S. Attorney Cummins to resign. At that time, my office expressed my concern to the White House Counsel regarding this matter, and Mr. Cummins was able to remain in his position until the end of December. While I am pleased that his service was extended, I am left with the conclusion that the purpose for the dismissal of Mr. Cummins was to appoint Mr. Griffin.

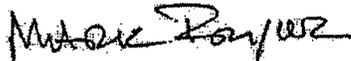
Second, I am astonished that the reason given by your office for the interim appointment is that the First Assistant U.S. Attorney is on maternity leave and therefore would not be able to perform the responsibilities of the appointment. This reason was given to my Chief of Staff, to the news media, and to me by your liaison in a meeting this week. This concerns me on several levels, but most importantly it uses pregnancy and motherhood as conditions that deny an appointment. While this may not be actionable in a public employment setting, it clearly would be in a private employment setting. The U.S. Department of Justice should never discriminate against women in this manner.

Finally, and most importantly, the appointment undermines the Senate confirmation process. The authority granted to the Attorney General to make an interim appointment for an indefinite time was given pursuant to the Patriot Act. I believe that in using this provision, the Attorney General should articulate a national security or law enforcement need that necessitates such an appointment. You have failed to do so in this case. In fact, as cited above, the reason articulated is at worst grossly deficient, and at best, a poor pretense.

For me personally this last point is most troublesome. When the Patriot Act was up for reauthorization, you called me and discussed the importance of its passage. I told you that while there were items in the Act that concerned me, I trusted that the spirit of the law would be upheld. It has also come to my attention that there may have been other similar appointments made under this provision of the Patriot Act. Therefore, I believe that the spirit of the law regarding this interim appointment (and perhaps others) has been violated. As such, I am pushing for a legislative change. I have signed on to a Bill that would strike the previous amended language and restore appointment authority to the original 120 days.

I am quite sure that you may not agree with some or all of my conclusions, therefore, I await your response and I appreciate your cooperation in this matter.

Sincerely,



Mark Pryor

Sent via facsimile



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 16, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. Discussions with United States Attorneys regarding their continued service generally are non-public, out of respect for those United States Attorneys; indeed, a public debate about the United States Attorneys that may have been asked or encouraged to resign only disserves their interests. In any event, please be assured that United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case. United States Attorneys are law

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enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

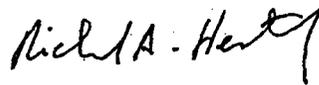
Enclosed per your request is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed,

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every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

Enclosure

0AG000000432

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney (Cardona is not a candidate for presidential nomination; a nomination is not yet ready);
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (Massey is not a candidate for presidential nomination; a nomination was made last Congress, but confirmation did not occur);

- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL’S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of nine times since the authority was amended in March 2006. In two of the nine cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA’s 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same

FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick (Dedrick has expressed interest in presidential nomination; nomination is not yet ready).

In one case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen (Cohen is not a candidate for presidential nomination; nomination is not yet ready).

In the five remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).



Department of Justice

STATEMENT

OF

PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

**“PRESERVING PROSECUTORIAL INDEPENDENCE:
IS THE DEPARTMENT OF JUSTICE
POLITICIZING THE HIRING AND FIRING
OF U.S. ATTORNEYS?”**

PRESENTED ON

FEBRUARY 6, 2007

OAG000000436

**Testimony
of**

**Paul J. McNulty
Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States Senate**

“Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?”

February 6, 2007

Chairman Leahy, Senator Specter, and Members of the Committee, thank you for the invitation to discuss the importance of the Justice Department’s United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation’s laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for

confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment

of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney

vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act (“VRA”), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General’s appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General’s appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year’s amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General’s appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district

courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

Statement of Mary Jo White

Senate Committee on the Judiciary
Hearing: "Preserving Prosecutorial Independence:
Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"
February 6, 2007

My name is Mary Jo White. I am providing this written statement and testifying at this hearing at the invitation of Senator Patrick Leahy, the Chairman of the United States Senate Committee on the Judiciary.

By way of background, I spent over fifteen years in the Department of Justice (the "Department"), both as an Assistant United States Attorney and as United States Attorney. I served during the tenures of seven Attorneys General: Griffin B. Bell, Benjamin R. Civiletti, William French Smith, Richard L. Thornburgh, William P. Barr, Janet Reno and John Ashcroft. I was twice appointed as an Interim United States Attorney, first in the Eastern District of New York in 1992 by Attorney General Barr and then in 1993 by Attorney General Reno in the Southern District of New York. Most recently, I served for nearly nine years as the Presidentially-appointed United States Attorney in the Southern District of New York from September 1993 until January 2002. I was the Chair of the Attorney General's Advisory Committee from 1993-1994. Since April 2002, I have served as the Chair of the Litigation Group of Debevoise & Plimpton LLP, the law firm at which I started my legal career.

Maintaining the prosecutorial independence of the United States Attorneys, which is the subject of this hearing, is vital to ensuring the fair and impartial administration of

justice in our federal system. Concerns have recently been raised as to whether that independence is being compromised by the reported installation by the Department of Justice of Interim United States Attorneys in replacement of a number of sitting Presidentially-appointed United States Attorneys who have allegedly been asked to resign in the absence of misconduct or other compelling cause. It has been variously suggested that at least some of these resignations have been sought from qualified United States Attorneys in favor of appointees who may be more politically and behaviorally aligned with the Department's priorities; to replace a United States Attorney because of public corruption or other kinds of sensitive cases and investigations brought or in process; as a result of a Congressman's criticism; or just to give another person the opportunity to serve and have the high-profile platform of serving as a United States Attorney. These allegations, in my view, raise legitimate concerns for this Committee about the fair and impartial administration of justice, both in fact and in appearance. If the allegations were true, the actions being taken by the Department would appear to pose a threat to the independence of the United States Attorneys and to diminish the importance of the jobs they are entrusted to do. There would be, at a minimum, a significant appearance issue.

A related concern has been raised about a recent change in the statutory framework for the appointment of Interim United States Attorneys embodied in the re-authorized USA Patriot Act.¹ Under the new provision, the Attorney General is accorded unilateral power to make appointments of Interim United States Attorneys for an indefinite period of time, without the necessity of obtaining the advice and consent of the

United States Senate, which is required for every Presidentially-nominated United States Attorney. Previously, the law empowered the Attorney General to appoint Interim United States Attorneys for a period up to 120 days; thereafter, if no successor was nominated by the President and confirmed by the Senate, the chief judge of the relevant district court was accorded the power of appointment until a Presidentially-appointed successor was confirmed by the Senate.

For whatever assistance it may be to the Committee, I will provide my personal perspective on these issues. Before doing so, let me make very clear up front that I have the greatest respect for the Department of Justice as an institution and have no personal knowledge of the facts and circumstances regarding any of the reported requests for resignations of sitting United States Attorneys. And, with one exception, I do not know any of the United States Attorneys in question or their reported replacements. The one exception is the United States Attorney for the Southern District of California, a career prosecutor, whom I know and first came to know of when she was an Assistant United States Attorney doing very impressive work in the area of healthcare fraud. Because I do not know the precipitating facts and circumstances, I am not in a position to support or criticize the reported actions of the Department and do not do so by testifying at this hearing. I can and will speak only about my views about the importance of the United States Attorneys to our federal system of criminal and civil justice, the importance of preserving the independence of the United States Attorneys, and how I believe that casual

or unwisely motivated requests for their resignations could undermine our system of justice and diminish public confidence.

My views on the issues I understand to be before the Committee are as follows:

- United States Attorneys are political appointees who serve at the pleasure of the President. It is thus customary and expected that the United States Attorneys generally will be replaced when a new President of a different party is elected. There is also no question that Presidents have the power to replace any United States Attorney they have appointed for whatever reason they choose.
- In my experience and to my knowledge, however, it would be unprecedented for the Department of Justice or the President to ask for the resignations of United States Attorneys during an Administration, except in rare instances of misconduct or for other significant cause. This is, in my view, how it should be.
- United States Attorneys are, by statute and historical custom, the chief law enforcement officers in their districts, subject to the general supervision of the Attorney General.² Although political appointees, the United States Attorneys, once appointed, play a critical and non-political, impartial role in the administration of justice in our federal system. Their selection is of vital national and local interest.
- In his well-known address to the United States Attorneys in 1940, then Attorney General Robert H. Jackson, although acknowledging the need for some measure of centralized control and coordination by the Department, eloquently emphasized the importance of the role of the United States Attorneys and their independence:

It would probably be within the range of that exaggeration permitted in Washington to say that assembled in this room is one of the most powerful peace-time forces known to our country. The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous.

.....

These powers have been granted to our law-enforcement agencies because it seems necessary

that such a power to prosecute be lodged somewhere. This authority has been granted by people who really wanted the right thing done—wanted crime eliminated—but also wanted the best in our American traditions preserved.

.....

Because of this immense power to strike at citizens, not with mere individual strength, but with all the force of government itself, the post of [United States Attorney] from the very beginning has been safeguarded by presidential appointment, requiring confirmation of the Senate of the United States. You are thus required to win an expression of confidence in your character by both the legislative and the executive branches of the government before assuming the responsibilities of a federal prosecutor.

.....

Your responsibility in your several districts for law enforcement and for its methods cannot be wholly surrendered to Washington, and ought not to be assumed by a centralized Department of Justice.

.....

Your positions are of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just.

.....

The federal prosecutor has now been prohibited from engaging in political activities. I am convinced that a good-faith acceptance of the spirit and letter of that doctrine will relieve many [United States Attorneys] from the embarrassment of what have heretofore been regarded as legitimate expectations of political service. . . . I think the Hatch Act should be utilized by federal prosecutors as a protection against demands on their time and prestige. . . .³

- Justice Jackson's remarks capture well the importance of both the role of United States Attorneys and the independence that is necessary to successfully fulfill their role. The Department of Justice should guard

carefully against acting in ways that may be perceived to diminish the importance of the office of United States Attorney or of its independence.

- Changing a United States Attorney invariably causes disruption and loss of traction in cases and investigations in a United States Attorney's Office. This is especially so in sensitive or controversial cases and investigations where the leadership and independence of the United States Attorney are often crucial to the successful pursuit of such matters, especially in the face of criticism or political backlash. Replacing a United States Attorney can, of course, be necessary or part of the normal and expected process that accompanies a change of the political guard. But I do not believe that such changes should, as a matter of sound policy, be undertaken lightly or without significant cause. In this and most previous Administrations, the United States Attorneys appointed by the prior Administration were replaced in an orderly and respectful fashion over several months after the election to allow for a smooth transition. If wholesale change in the United States Attorneys is to occur, it should be done in this way. In my view, wholesale replacement of the United States Attorneys should not be done immediately following an election, as occurred at the outset of the Clinton Administration—such abrupt change is not necessary and can undermine the important work of the United States Attorneys' Offices. In some instances, the President of a different party has allowed some of his predecessor's appointees to remain, as happened in New York, with the support of Senator Daniel Patrick Moynihan, when Jimmy Carter was elected President.
- If United States Attorneys are replaced during an Administration without apparent good cause, the wrong message can be sent to other United States Attorneys. We want our United States Attorneys to be strong and independent in carrying out their jobs and the priorities of the Department. We want them to speak up on matters of policy, to be appropriately aggressive in investigating and prosecuting crimes of all kinds and wisely use their limited resources to address the priorities of their particular district. The United States Attorneys are generally closest to the problems and needs of their districts and thus use their discretion and judgment as to how best to apply national initiatives and priorities. One size seldom fits all. There isn't one right answer or rigid plan that can be applied to achieve optimal justice in each district. The federal system has historically counted on the independence and good judgment of the United States Attorneys to carry out the Department's mission, tailored to the specific circumstances of their districts.

- In my opinion, the United States Attorneys have historically served this country with great distinction. Once in office, they become impartial public servants doing their best to achieve justice without fear or favor. As Justice Sutherland said in *Berger v. United States*: "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice be done. As such, he is in a peculiar and very definite sense the servant of the law. . . ." I am certain that the Department of Justice would not want to act in such a way or have its actions perceived in such a way to derogate from this model of the non-political pursuit of justice by those selected in an open and transparent manner.
- Finally, as to the issue of the optimal appointment mechanism for Interim United States Attorneys, I defer to Congress and the constitutional scholars to find the right answer. For what it is worth, as a practical matter, I believe that the Department of Justice, in the first instance, is ordinarily in the best position to select an appropriate Interim United States Attorney who will ensure the least disruption of the business of the United States Attorney's Office until a permanent successor can be selected and confirmed. I can, however, also appreciate the concern with permitting such appointments to be made for an indefinite period of time without the necessity of Senate confirmation. I personally thought the structure of allowing the Attorney General to appoint Interim United States Attorneys for a period of 120 days and then giving that power to the chief judge of the district generally worked well and achieved an appropriate balance.

Thank you for giving me the opportunity to share my perspective with the Committee. I would be happy to answer any questions.

¹ USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. 109-177, §502, 120 Stat. 192, 246-47 (2006); 28 U.S.C. § 546 (2006).

² 28 U.S.C. §§ 519 & 521-50 (2006); *Nadler v. Mann*, 951 F.2d 301, 305 (11th Cir. 1992); United States Attorneys Mission Statement ("Each United States Attorney exercises wide discretion in the use of his/her resources to further the priorities of the local jurisdiction and needs of their communities. United States Attorneys have been delegated full authority and control in the areas of personnel management, financial

management, and procurement.”), <http://www.usdoj.gov/usao/index.html> (last visited Feb. 4, 2007); U.S. Attys’ Manual § 3-2.100 (“the United States Attorney serves as the chief law enforcement officer in each judicial district. . . .”); U.S. Attys’ Manual § 3-2.140 (“They are the principal federal law enforcement officers in their judicial districts.”), http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title3/2musa.htm#3-2.100 (last visited Feb 4, 2007).

³ Robert H. Jackson, *The Federal Prosecutor*, Address at the Second Annual Conference of United States Attorneys (Apr. 1, 1940), reprinted in 24 *J. Am. Judicature Soc’y* 18, 19 (1940); also available at <http://www.roberthjackson.org/Man/theman2-7-6-1/> (last visited Feb. 4, 2007).

⁴ 295 U.S. 78, 88 (1935).

MARY JO WHITE
PARTNER



When Mary Jo White left her post as US Attorney for the Southern District of New York in January, 2002, she was acclaimed for her nearly nine years as the leader of what is widely recognized as the premier US Attorney's office in the nation. She had supervised over 200 Assistant US Attorneys in successfully prosecuting some of the most important national and international matters, including complex white collar and international terrorism cases. She is a Fellow in the American College of Trial Lawyers and the International College of Trial Lawyers. Ms. White is the recipient of numerous awards and is regularly ranked as a leading lawyer by directories that evaluate law firms. In addition, Ms. White served as a Director of The Nasdaq Stock Exchange, and on its Executive, Audit and Policy Committees (2002 to February 2006). She is also a member of the Council on Foreign Relations.

Ms. White rejoined Debevoise in 2002, and was made Chair of the firm's over 225-lawyer Litigation Department. Ms. White's practice concentrates on internal investigations and defense of companies and individuals accused by the government of involvement in white collar corporate crime or Securities and Exchange Commission (SEC) and civil securities law violations, and on other major business litigation disputes and crises. For her criminal work, she leads a Debevoise team that includes ten former Assistant US Attorneys with extensive experience in major commercial investigations and prosecutions.

Ms. White served as the United States Attorney for the Southern District of New York from 1993 to 2002. She is the only woman to hold the top position in the more than 200-year history of that office, which has the responsibility of enforcing the federal criminal and civil laws of the nation. Ms. White also served as the first Chairperson of Attorney General Janet Reno's Advisory Committee of United States Attorneys from all over the country. Prior to becoming the United States Attorney in the Southern District of New York, Ms. White served as the First Assistant United States Attorney and Acting United States Attorney in the Eastern District of New York from 1990 to 1993.

Under Ms. White's leadership, the United States Attorney's Office for the Southern District of New York successfully investigated and prosecuted numerous cases of national and international significance. These include cases involving large scale white collar and complex securities and financial institution frauds as well as cases involving corporate criminal liability, international

terrorism, international money laundering, police and other public official corruption, organized crime, civil rights, environmental law violations, narcotics trafficking and major racketeering cases that dismantled the largest, most violent gangs in New York City. Prominent among those cases were the prosecution of those responsible for the bombing of the WTC in 1993; the terrorists who planned to blow up the United Nations, the FBI Building in Manhattan, and the Lincoln and Holland Tunnels; the terrorists who plotted to simultaneously blow up a dozen jumbo jets over the Pacific Ocean; those responsible for the bombings of the US Embassies in Nairobi, Kenya and Tanzania in 1998, including Osama Bin Laden; and the investigation of the terrorist attacks of September 11, 2001 on the WTC and the Pentagon.

Ms. White has received numerous awards and honorary degrees for her professional accomplishments, including the George W. Bush Award for Excellence in Counterterrorism and the Agency Seal Medallion given by the CIA; the Director of the FBI's Jefferson Cup Award for Contributions to the Rule of Law in the Fight Against Terrorism and Crime; the Sandra Day O'Connor Award for Distinction in Public Service; the John P. O'Neill Pillar of Justice Award given by the Respect for Law Alliance; the Edward Weinfeld Award for Distinguished Contributions to the Administration of Justice given by the New York County Lawyers' Association; the "Prosecutor of the Year" Award given by the Respect for Law Alliance; the "Community Leadership Award" given by the Federal Law Enforcement Foundation; the "Law Enforcement Person of the Year" Award given by the Society of Professional Investigators; the "Magnificent 7" Award given by the Business and Professional Women USA; the "Human Relations Award" given by the Anti-Defamation League Lawyer's Division; the "Women of Power and Influence Award" given by the National Organization of Women; the "American Prosecutor's Award" given by St. John's University Criminal Justice Program; the "Medal for Excellence" given by the Columbia University School of Law Association; the "Outstanding Women of the Bar Award" given by the New York County Lawyers' Association; the Milton S. Gould Award for Outstanding Oral Advocacy; the "Law & Society Award" given by the New York Lawyers for the Public Interest; and the "Most Influential Women in the Law Award" given by the Benjamin N. Cardozo School of Law.

From 1983 to 1990, Ms. White was a litigation partner at Debevoise, where she focused on white collar defense work, SEC enforcement matters, and commercial and professional civil litigation. From 1978 to 1981, Ms. White served as an Assistant United States Attorney in the Southern District of New York, where she became Chief Appellate Attorney of the Criminal Division. Prior to that, she worked as an associate at Debevoise from 1976 to 1978. Ms. White served as a law clerk to the Honorable Marvin E. Frankel, US District Court for the Southern District of New York and was admitted to the bar in New York in 1975.

Ms. White graduated from William & Mary, Phi Beta Kappa with a B.A. in Psychology in 1970, The New School for Social Research with an M.A. in Psychology in 1971 and Columbia Law School with a J.D. in 1974, where she was an officer of the Law Review.

Testimony of Professor Laurie L. Levenson
Senate Judiciary Committee Hearing
**“Preserving Prosecutorial Independence: Is the Department of Justice Politicizing
the Hiring and Firing of U.S. Attorneys?”**

Feb. 6, 2007

Thank you for the opportunity to testify before your committee. I am currently Professor of Law, William M. Rains Fellow, and Director of the Center for Ethical Advocacy at Loyola Law School. I am the author of several books and dozens of articles, many of which address law enforcement and the criminal justice system. For eight years, from 1981 to 1989, I proudly served as an Assistant United States Attorney for the Central District of California in Los Angeles. As an Assistant U.S. Attorney, I worked as a trial attorney in the Major Crimes and Major Frauds Section, Chief of the Appellate Section and Chief of Training for the Criminal Division. I received the Attorney General's Director's Award for Superior Performance and commendations from the Federal Bureau of Investigation, United States Postal Inspectors, and other federal investigative agencies.

I was hired as an Assistant U.S. Attorney by Andrea S. Ordin, a Democrat appointed by President Jimmy Carter. When she left, I served for three Republican U.S. Attorneys during my tenure in the office. First, I worked for the Honorable Stephen S. Trott, who was appointed by President Ronald Reagan. Next, I worked for interim U.S. Attorney Alexander H. Williams, III, another Republican, who was appointed by the chief judge of our district. Finally, I worked for U.S. Attorney Robert C. Bonner, who was appointed by President George H.W. Bush. The transition from one U.S. Attorney to the next was seamless, and did not carry with it the controversy that has now developed about changes in U.S. Attorneys. I remain in regular contact with current and former federal prosecutors throughout the country. I hear their concerns and try to address them in my articles and books on the role and responsibilities of federal prosecutors.

As a former Assistant United States Attorney who served under both Democratic and Republican administrations, I am deeply concerned about the recent firings of qualified and demonstrably capable United States Attorneys and their replacement with individuals who lack the traditional qualifications for the position. The perception by many, including those who currently serve and have served in U.S. Attorneys Offices, is that there is a growing politicization of the work of federal prosecutors. Asking qualified U.S. Attorneys to leave and replacing them with political insiders is demoralizing; it denigrates the work of hardworking and dedicated Assistant U.S. Attorneys and undermines public confidence in the work of their offices.

Recently, seven United States Attorneys were fired by the Attorney General during the middle of a presidential term. Several of them have excellent reputations for being dedicated, experienced and successful U.S. Attorneys. Nonetheless, they were given no reason for their dismissals and, in at least one case, have been replaced by

someone who does not have the professional qualifications for the position, but comes from a deeply political, partisan background. Perhaps not so coincidentally, all of this is occurring on the heels of the Attorney General securing new statutory power to make indefinite interim appointments of U.S. Attorneys without review by the Senate or any other branch of government.

In my opinion, the new appointment procedures for interim U.S. Attorneys have added to the increasing politicization of federal law enforcement. Under the prior system, the Attorney General could appoint an interim U.S. Attorney for 120 days, giving the President a full four months to nominate and seek confirmation of a permanent replacement. If this was not done, the Chief Justice of the District would appoint an interim U.S. Attorney until a successor U.S. Attorney was nominated and confirmed. This system gave an incentive to the President to nominate a successor in a timely fashion and gave the Senate an opportunity to fulfill its constitutional responsibility of evaluating and deciding whether to confirm that candidate.

Under the present system, the Executive Branch can – and appears determined to – bypass the confirmation role of the Senate by making indefinite interim appointments. The result is a system where political favorites may be appointed without any opportunity for the Senate to evaluate those candidates' backgrounds and qualifications to serve as the chief federal law enforcement officer of their districts. Even if the Attorney General can explain the recent round of firings and replacements, the current statutory system opens the door to future abuses. The public should not have to rely on the good faith of individuals over sound statutory authority to ensure the accountability of key federal law enforcement officials.

In my testimony, I would like to address three key issues: First, the dangers of the politicization of the U.S. Attorneys Offices; second, why the recent actions of this administration are different from those of prior administrations, and third, why it is both constitutional and preferable to have the Chief Judges of the district, not the Attorney General, appoint interim U.S. Attorneys.

The recent perceived purging of qualified U.S. Attorneys is having a devastating impact on the morale of Assistant United States Attorneys. These individuals work hard to protect all of us by prosecuting a wide range of federal crimes. In recent years, AUSAs have struggled with many challenges, including a lack of resources. In Los Angeles (where I served as a federal prosecutor), there have been times recently when there was insufficient paper for the AUSAs to copy documents they were constitutionally required to turn over in discovery. Nonetheless, these professionals persevered at their jobs because of their commitment to pursuing justice on behalf of the people they serve. It is deeply demoralizing for them to now see capable leaders with proven track records of successful prosecutions summarily dismissed and replaced by those who lack the qualifications and professional backgrounds traditionally expected of United States Attorneys.

Moreover, the dismissal of competent U.S. Attorneys and their replacement with interim U.S. Attorneys unfamiliar with local law enforcement priorities and the operation of the offices poses risks to ongoing law enforcement initiatives. Many U.S. Attorneys Offices are engaged in joint task forces with state and local law enforcement agencies. Appointing an interim U.S. Attorney unfamiliar with the district gives the appearance that the ship has lost its rudder, undermines public confidence in federal law enforcement, creates cynicism about the role of politics in all prosecutorial decisions, and makes it more difficult to maintain such joint law enforcement operations.

Although this is not the first time in history that U.S. Attorneys have been asked to submit their resignations, the Attorney General's actions at this time are unlike anything that has occurred before. In my experience, one could expect a changeover in U.S. Attorneys when there was a change in Administrations. United States Attorneys serve at the pleasure of the President and a new President certainly has the right to make appointments to that position. However, we have never seen the type of turnover now in progress, where the Attorney General, not the President, is asking mid-term that demonstrably capable U.S. Attorneys submit their resignations so that Washington insiders may be appointed in their place.

Moreover, we have never seen an Administration accomplish this task by bypassing the traditional appointment process. Under the prior system, the rules for interim appointments limited the Attorney General's power to install a U.S. Attorney for lengthy periods of time without the advice and consent of the Senate. Under the current system, the Attorney General is free to make indefinite interim appointments of individuals whose background, qualifications and prosecutorial priorities are not subjected to Congressional scrutiny.

The issue is one of transparency and accountability. If interim U.S. Attorneys may serve indefinitely without undergoing the confirmation process, the Senate simply cannot fulfill its constitutional "checks and balances" role in the appointment of these officers. The confirmation process serves an important purpose in the selection of U.S. Attorneys. It gives the Senate an opportunity to closely examine the background and qualifications of the person poised to become the most powerful federal officer in each district and to evaluate the priorities that nominee is setting for law enforcement in his or her jurisdiction.

The prior system -- in which the Chief Judge appointed interim U.S. Attorneys if the Administration did not nominate and obtain confirmation for one within four months of the vacancy opening -- had advantages that the current system does not. First, in my experience, the Chief Judges of a district often have a much better sense of the operation of the U.S. Attorney's office and federal agencies in their jurisdiction than those who are thousands of miles away in Washington, D.C. Indeed, in my district and many others, several district judges are themselves former U.S. Attorneys, intimately familiar with the requirements of the office. Their goal is to find a U.S. Attorney who will serve the needs of the local office and the constituents it serves. Chief Judges are generally familiar with the federal bar in the district and with those individuals who could best fulfill the interim

role. The Chief Judges are in an excellent position to find an appointee, often someone from the office itself, who will serve as a steward until a permanent successor is found.

Second, interim appointments by Chief Judges are less likely to be viewed as political favors, because it is understood that the judge's selection can be superseded at any time once the Administration nominates and obtains Senate confirmation of an appointee of its choice. Chief Judges generally have the respect and confidence of those in their district. There is a greater belief that the Chief Judge will have the best operations of the justice system in mind when he or she makes an interim appointment.

In my opinion, the role of judges under the prior system in making interim appointments of United States Attorneys is constitutional and consistent with separation-of-powers principles. In *Morrison v. Olson*, 487 U.S. 654 (1988), the United States Supreme Court held that the role of the courts in appointing independent counsel pursuant to the Ethics in Government Act of 1978 did not violate Article III of the Constitution or separation-of-powers principles. Chief Justice William Rehnquist recognized that the Constitution permits judges to become involved in the appointment of special prosecutors. See U.S. Const., Art. II, §2, cl. 2 ("excepting clause" to "Appointments clause"). He then noted that that lower courts had similarly upheld interim judicial appointments of United States Attorneys. See *United States v. Solomon*, 216 F.Supp. 835 (S.D.N.Y. 1963).

Like the role of judges in making appointments of special prosecutors, the role of Chief Judges in making interim appointments of U.S. Attorneys is authorized by the Constitution itself. U.S. Attorneys can be properly considered "inferior officers" for purposes of the Appointments Clause. They have less jurisdiction and overall authority than the Attorney General and rely on the Attorney General for resources and Justice Department policies. The "Excepting Clause" allows judges to be involved in the appointment process of inferior officers. The court's role in appointment of interim U.S. Attorneys does not unnecessarily entangle the judicial branch with the day-to-day operations of the Executive Branch. Moreover, if the Executive Branch disagrees with the court's appointment, it has a ready remedy by nominating and obtaining confirmation of its own candidate.

Nor does the role of judges in appointing a prosecutor violate separation-of-powers principles. The Chief Judge's power to appoint an interim U.S. Attorney does not come with the right to "supervise" that individual in his or her investigative or prosecutorial authority. *Morrison* at 681. The interim U.S. Attorney does not report to the judge and there is no reason to believe that he or she will change prosecutorial policies at the whim of the court. For the reasons the Supreme Court authorized judges to appoint independent counsel in *Morrison*, I believe it is constitutional for Congress to adopt a rule giving judges a role in appointing interim U.S. Attorneys.

The public has great confidence in appointments made by the bench, whether they be of the Federal Public Defender, Magistrate Judges or interim prosecutors. Indeed, the Supreme Court itself has noted the benefits of having judges involved in the appointment

of prosecutors. In *Morrison*, Chief Justice Rehnquist wrote, “[I]n light of judicial experience with prosecutors in criminal cases, it could be said that *courts are especially well qualified* to appoint prosecutors.” *Id.* at 676 n.13 (emphasis added).

Last week, in a letter dated February 2, 2007, to Senator Patrick J. Leahy, Chairman of the Senate Judiciary Committee, Acting Assistant Attorney General Richard A. Hertling, claimed that it would be “inappropriate and inconsistent with sound separation of powers principles ... to vest federal courts with the authority to appoint a crucial Executive Branch office such as a United States Attorney.” He cited no authority in support of this principle; indeed, the case law, as represented by *Morrison*, goes against him on this point. The Supreme Court has made it quite clear that judges may properly have a role in appointing prosecutors and that such a procedure does not violate constitutional proscriptions or principles of separation of powers.

I was further surprised when Mr. Hertling’s letter claimed that an interim U.S. Attorney appointed by the court could not be sufficiently independent because he or she would be “beholden” to the court for making his or her appointment. I am unaware of any situation in which an interim U.S. Attorney failed to do his or her duties because of some supposed indebtedness to the court, nor does Mr. Hertling cite any such example. Moreover, if there ever were to be such a situation, the President could fire that individual and nominate a successor U.S. Attorney who would be subject to the confirmation process.

The recent actions of the Attorney General give the appearance that there is an ongoing effort by the Attorney General to consolidate power over U.S. Attorneys Offices and insulate their actions from the scrutiny of Congress. It is very hard to otherwise explain why a U.S. Attorney like Bud Cummins III would be terminated after receiving sterling evaluations and replaced by a political adviser who doesn’t have nearly the same qualifications. Such actions are likely to work against the interest of federal law enforcement and of the American public.

Ultimately, the debate today is about what we want our U.S. Attorneys Offices to be. If they are to be professional law enforcement offices responding to the needs of the citizens of their districts, they must be led by independent professionals with the support of the Justice Department. If and when they become mere rewards or resume builders for those in the good graces of the Attorney General, they will quickly lose their credibility and thus their ability to perform their jobs effectively. U.S. Attorneys Offices which become – or are perceived to have become – politicized will cease to attract the best and the brightest of lawyers committed to serving the public as dedicated, politically independent professionals. The new Act authorizing appointment of interim U.S. Attorneys for an indefinite period of time creates a serious risk this will occur, because it undermines the Senate’s role in evaluating and confirming candidates. As such it poses a much greater risk to constitutional principles, including the separation of powers, than does the role of judges in making interim appointments.

Laurie L. Levenson
Professor of Law and William M. Rains Fellow
Director, Center for Ethical Advocacy

Laurie L. Levenson is Professor of Law and William M. Rains Fellow at Loyola Law School where she teaches criminal law, criminal procedure, ethics, anti-terrorism, and evidence. She served as Loyola's Associate Dean for Academic Affairs from 1996-1999. In addition to her teaching responsibilities, Professor Levenson is also the Director of the Loyola Center for Ethical Advocacy. Professor Levenson was the 2003 recipient of Professor of the Year from both Loyola Law School and the Federal Judicial Center.

Prior to joining the Loyola Law School faculty in 1989, Professor Levenson served for eight years as an Assistant United States Attorney in Los Angeles. While a federal prosecutor, Professor Levenson tried a wide variety of federal criminal cases, including violent crimes, narcotics offenses, white collar crimes, immigration and public corruption cases. She served as Chief of the Training Section and Chief of the Criminal Appellate Section of the U.S. Attorney's Office. In 1988, she received the Attorney General's Director's Award for Superior Performance. Additionally, she received commendations from the FBI, IRS, U.S. Postal Service, and DEA.

Professor Levenson attended law school at UCLA School of Law and received her undergraduate degree from Stanford University. In law school, she was the Chief Article Editor of the Law Review. After graduation, she clerked for the Honorable Judge James Hunter, III, of the U.S. Court of Appeals for the Third Circuit.

Professor Levenson is the author of numerous books and articles, including: *California Criminal Procedure* (2003); *California Criminal Law* (2003), *Handbook on the Federal Rules of Criminal Procedure* (2003); *Roadmap of Criminal Law* (1997); *Police Corruption and New Models for Reform*, 35 Suffolk L. Rev. 1 (2001); *Working Outside the Rules: The Undefined Responsibilities of Federal Prosecutors* (1999); *Ethics of Being a Legal Commentator*, 69 So. Cal. L. Rev. 1303 (1996); *Good Faith Defenses: Reshaping Strict Liability Crimes*, 78 Cornell L. Rev. 401 (1993); *Change of Venue and the Role of the Criminal Jury*, 66 So. Cal. L. Rev. 1533 (1993); *The Future of Civil Rights Prosecutions: The Lessons of the Rodney King Trial*, 41 U.C.L.A. L. Rev. 509 (1994); and *Media Madness or Civics 101: The Lessons of "The Trial of the Century,"* 26 U.W.L.A. 57 (1995).

Professor Levenson has served as a volunteer counsel for the "Webster Commission" and as a Special Master for the Los Angeles Superior Court and United States District Court. She has served as a member of the Los Angeles County Bar Association Judicial Appointments Committee and Judiciary Committee.

Professor Levenson lectures regularly throughout the country and internationally for the Federal Judicial Center, National Judicial College, international bar associations, bar review courses, community groups and legal societies.

PREPARED STATEMENT OF THE HON. STUART M. GERSON
REGARDING PRESERVING PROSECUTORIAL INDEPENDENCE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

February 6, 2007

Mr. Chairman and distinguished members of the Senate Judiciary Committee. It is an honor for a former Justice Department senior official, one who began his legal career as a line Assistant United States Attorney, to be invited back to testify before this Committee on the subject of prosecutorial independence and whether the Department of Justice is unduly politicizing the hiring and firing of U.S. Attorneys.

This is not a new subject, either to this Committee or to me. Indeed, I understand that I have been invited to testify in significant measure because I have substantial direct experience dealing with the issue of the tenure of United States Attorneys in several different capacities during several different administrations.

Accordingly, I shall address the issue from a historical and constitutional perspective but from a practical standpoint as well. This duality of approach suggests several conclusions:

1. Separation of powers concerns inform both the President's appointments authority and the Congress's oversight role with respect to the selection and retention of constitutional officers and "inferior" officers such as United States Attorneys. To the extent that "independence" is a virtue, and that is a term the vitality of which depends upon its definition, it derives from the President's Article II responsibility to "take care" that the law "be faithfully executed." Clearly both common sense and experience,

especially recent history, involving the conduct of so-called Independent Counsels responsible to courts, punctuates the need for separating prosecutorial authority from judicial authority, even as to the issue at hand: filling vacancies caused by the resignation or dismissal of U.S. Attorneys. With respect to said vacancies, one must note that, pursuant to Article II, Congress has the power to assign at least some appointment responsibility to the judiciary, and has done so in the past. My argument, therefore, is addressed to congressional discretion, not its authority. The exercise of that discretion should be tempered by separation of powers concerns.

2. The selection and retention process for United States Attorneys is, and always has been, a “political” matter both because these activities are properly partisan and because their conduct is best confined to the elected, political branches of government.
3. S. 214, while understandably motivated and representative of a situation that might otherwise effectively be addressed, at least through congressional oversight, is misguided because the vacancy problems that it seeks to solve are neither unprecedented nor pervasive, and because the remedy offered, *i.e.*, an exclusive judicial role in dealing with vacant United States Attorneys’ positions, contradicts an appropriate executive function, is anomalous and unwelcome to the judiciary and, most importantly, will have the unintended effect of hampering the Senate’s proper oversight role of executive functions.

4. The “independence” that should be sought from United States Attorneys is independence of judgment in areas properly consigned to their areas of delegated authority. While that means that a United States Attorney must be free to prosecute wrongdoing, even on the part of the administration that has selected him or her, it does not mean that a United States Attorney must be politically independent of the President and Attorney General in regard to their legal agendas and in rendering appropriate legal advice. There are several checks that insure judgmental independence including congressional oversight and the presence of a capable and distinguished corps of career prosecutors in the various United States Attorneys’ offices. In my direct experience, running from the Watergate prosecutions during the Nixon Administration in the 1970’s to several matters of note during the Clinton Administration in the 1990’s, if there has been any presidential abuse of the prosecutorial function, and that is questionable, it has had nothing to do with vacancies in U.S. Attorneys’ offices and any problems were quickly and effectively addressed.

The Law Governing the Appointment of U.S. Attorneys and the Separation of Power Issues That Are Implicated in the Process

Under the Appointments Clause, Art. II, sec. 2, cl. 2, the President is vested with the responsibility of appointing all officers of the United States, subject to Senate confirmation. Art. II, sec. 3 describes the President’s fundamental responsibility to “take care” that the laws of the nation “be faithfully executed.”

In support of that function, Section 35 of Judiciary Act of 1789 provided for the appointment of an Attorney General who, among other things shall “give his advice and

opinion upon questions of law when required by the President of the United States” or by the heads of the executive branch departments of the government. The same section also provided for the appointment of United States Attorneys:

And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned

Through 28 U.S.C. §§ 516 and 519, Congress has given the Attorney General supervisory authority over United States Attorneys, commanding that litigation on behalf of the United States be conducted “under the direction of the Attorney General.” See *United States v. Hilario*, 218 F. 3d 19, 25 (1st Cir. 2000). Because United States Attorneys are supervised in significant part (though not completely) by the Attorney General, the case law suggests that they are “inferior” officers whose appointment constitutionally could be assigned by the Congress to a department head like the Attorney General or to a court. *Id.*; see *Edmond v. United States*, 520 U.S. 651, 659-60 (1997); compare *Morrison v. Olson*, 487 U.S. 654 (1988).

We are not concerned today with the nomination and confirmation of regular United States Attorneys but with the question of how interim United States Attorneys shall be selected (and how long they may serve) when the regular occupant of the office resigns or is terminated. From 1986 until approximately a year ago, the procedures for the appointment of interim U.S. Attorneys were set forth in a version of 28 U.S.C. § 546, which provided:

(c) A person appointed as United States attorney under this section may serve under section 541 of this title; or

(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

(2) the expiration of 120 days after appointment by the Attorney

General under this section.

(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. . . .

On March 9, 2006, the Patriot Act Reauthorization Bill was signed into law by the President, and this law amended Section 546 of Title 28 by striking subsections (c) and (d), *supra*, and adding a new subsection (c), which provides that a person appointed as an interim U.S. Attorney “may serve until the qualification of a United States Attorney for such District appointed by the President under section 541 of this title.” The Patriot Act Reauthorization thus struck the 120 day limit on the service of presidentially-appointed interim U.S. Attorneys and eliminated the courts from the process. Critics opined that this procedure effectively could extend the terms of interim U.S. Attorneys to the end of the term of the President that appoints them and circumvent the Senate’s confirmation process..

However, the number of interim U.S. Attorneys appointed by the current administration is not uncharacteristically high and, except where such persons were not able to serve, virtually all of them had been First Assistant United States Attorneys or similar senior supervisory officials in their offices. In other words, they would appear to be qualified to serve in the office, are generally have career status, and are typical of the persons who have been selected as interim U.S. Attorneys in past administrations. And to

the point of the confirmation process, it is my understanding that the current administration has pledged timely to nominate regular replacements where there have been vacancies and to assure that they are promptly subjected to the confirmation process.

Nevertheless, this Committee is considering S. 214, which would amend § 546 of Title 28, this time to eliminate the President from the vacancy filling process by repealing the section (c) that was included in the U.S. Patriot Act Reauthorization law and assigning exclusively to “The United States district court for a district in which the office of the United States attorney is vacant [the authority to] appoint a United States attorney to serve until that vacancy is filled.”

One notes with irony that a criticism of the 2006 version of § 546 was that, by Executive Branch fiat, the confirmation process could be thwarted, and that a criticism of the S. 214 version of § 546 is that, by Legislative Branch fiat, the confirmation process could be thwarted. Rather than engage in that kind of hypothesizing, I respectfully suggest that the Committee focus on the fact that, in the American experience it is a constitutional anomaly to include prosecution as part of the judicial power. *See Prakash, S. B., “The Chief Prosecutor,” 73 Geo. Wash. L. Rev. 521 (2005).* Where we have transgressed that principle, particularly in the case of court-empowered “independent” counsel, fair minded people of both parties have regretted it. Where other countries, particularly the Soviet bloc states, refused to separate the executive and judicial powers the result was disastrous.

In sum, though U.S. Attorneys are “inferior” officers, an interpretation that is embodied in all iterations of § 546, including the proposal of S. 214, and though an

earlier version of § 546 had an alternative judicial appointment provision, it would be a mistake from a separation of powers standpoint to cut the Executive Branch out of the appointment process for interim United States Attorneys and, unless a compelling need for it were shown, it would seem unnecessary to restore the judiciary to the program, especially in view of evidence that the judiciary is not desirous of the role and has not used it efficaciously on all occasions in the past. I do believe, however, that, if the retention of § 546 as it currently is formulated is unsatisfactory to a majority of the Committee, that the restoration of the previous version is superior to S. 214.

The Appointment of United States Attorneys is Properly a Political Function

When I was acting Attorney General in the first months of the Clinton Administration, a number of my conservative Republican erstwhile colleagues questioned how, on one hand, I could strongly recommend to the Democratic President in whose accidental service I found myself that he continue various Bush administration policies and initiatives implicating the Executive's war powers and foreign affairs powers, but on the other hand proceeded with a certain alacrity to assure that all Republican U.S. Attorney holdovers had to resign or be involuntarily replaced. The answer was a simple one: both hands were working to allow what Madison called an "energetic executive" to exercise his constitutional powers.

While many of the U.S. Attorneys that President Clinton was prepared to appoint, having begun to consult with the Senators from various states, hardly would represent my choices, he had the right, indeed the duty, to set up a legal mechanism to get the legal advice that he would need and position people to carry out his prosecutorial and litigation priorities throughout the country. And it was my obligation to set up a Justice Department

that my confirmed successor might step into and direct, assured that the administration's legal affairs were in the hands of capable attorneys of its choice.

While my personal situation was historically unique, there was nothing at all novel about United States Attorneys being replaced for political reasons. The Reagan administration, for example, acted in its own interests much the same as the Clinton administration had in its when it sought the prompt removal of all U.S. Attorneys from the previous administration, notwithstanding the fact that most of the persons whose nominations were to be submitted had not been selected and many interim persons would be required. One indeed would expect that the next administration will do the same thing and will have every right to act politically as to a task that is properly political – calling for the execution of policy choices accepted by the majority who voted for the new President.

Independence of Legal Judgment Does not Require the Elimination of Politics, but Independence is Sometimes not in the Interest of Justice

When in the early 1970's I was an Assistant United States Attorney in the District of Columbia, I litigated the first case involving the Watergate affair, thwarting an effort by a county district attorney to invade an area of federal prosecutorial prerogatives. Our office undertook a vigorous investigation that led to successful prosecutions and would have led to more, but for the appointment of a special prosecutor who supplanted the line prosecutors. In any event, one had good reason to believe that President Nixon was not at all happy with the energetic conduct of a United States Attorney that he appointed. A little earlier in my public career I prosecuted a sitting United States Senator whose case engendered vigorous comment and attempts to influence the course of litigation by certain of his colleagues. In these and other cases, and in many others in which my co-

workers prosecuted, we enjoyed steadfast support from both our politically-appointed United States Attorney and from the senior career staff in the office and at Main Justice, people like the legendary Henry Peterson, who taught us that our job was to do justice, to prosecute the cases in which we found merit and to decline the cases that we believed should not be brought – and to do both irrespective of outside pressure. That ethic was and is pervasive throughout the Department and the traditionally great United States Attorneys' offices such as the District of Columbia, the Southern District of New York and most others.

But I say with respect that maintaining that ethic, as important as it is, is not contradicted by a President and an Attorney General making political decisions, often in consort with members of the Senate, as to the appointment of U.S. Attorneys and their evaluations and (infrequent) terminations as well. In fact, one might argue that there are areas where the Department does not exercise strong enough control upon United States Attorneys. I offer several examples of matters in which I have been involved to make this point.

By statute, regulation and custom, the oversight and authority exercised by the Civil Division of the Justice Department over United States Attorneys is considerably greater than that generally exercised in the criminal area. During the Savings & Loan debacle of the late '80's and early '90's, the Civil Division, which I headed at the time, with substantial input from our oversight committees on the Hill, was able to undertake a fairly extensive and successful litigation program in consort with Federal thrift regulatory authorities and the civil divisions of various U.S. Attorneys' offices. Until we set up task forces and working groups that sent lawyers and agents from Washington and elsewhere

into to certain key districts, we were less successful on the criminal side, largely because some United States Attorneys did not think that pursuit of this kind of case should be a priority.

Several years later, an investigation produced substantial evidence that Salomon Brothers had misconducted itself in connection with the U.S. Treasury long bond market and that the impropriety was sponsored at the highest levels of the company. A United States Attorney and his senior staff were highly desirous of undertaking a massive prosecution under the securities laws a course of action that was not without legal merit but which also would have ended up depriving the company of most of its assets and employees and ultimately closing it down. That course had an analog in the earlier case of Drexel, Burnham. The Secretary of the Treasury, however, strongly believed that while the management of Salomon brothers had to be removed, sanctioned and replaced, an early settlement that would allow a restructured company to participate in the bond market, offering needed competition and financial stability, was greatly in the public interest. Ultimately this view prevailed, although the United States Attorney believed that his independence had been compromised.

During my service in the Clinton administration, I was presented with what I concluded was persuasive evidence that a United States Attorney and his staff had at least condoned racial discrimination in the selection of a jury about to sit in the trial of a nationally-known minority politician. While the prosecution was clearly in the public interest, discriminatory jury selection was not. I ordered the U.S. Attorney to confess error and, believing that I was interfering with his independence, he resigned. I

immediately appointed a lawyer to serve as Interim U.S. Attorney whom I knew would carry out what I thought to be the policy that justice commanded and he did so.

In all three of these cases, the "independence" of United States Attorneys was severely limited; in all three, I suggest, justice was done.

S. 214 Could Have Unintended and Unacceptable Consequences

The last of my examples is particularly instructive. The pursuit of what I thought was a just prosecutorial decision ended up causing a vacancy in a U.S. Attorney's office. An interim prosecutor was required immediately not only because the trial was imminent but because the underlying matter was controversial, and because the President's party didn't control the Senate, a body which then might not have confirmed a permanent nominee, assuming that the President even had one in mind at that point.. The court in the district in question was extremely hostile to what I was doing. Like the U.S. Attorney who resigned, the chief judge of the court in question saw my action as an unnecessary intrusion from Washington and never would have appointed a suitable interim prosecutor. And even if an unacceptable judicially-appointed prosecutor could be fired, and the Office of Legal Counsel Opinion on the subject generated during the Carter administration and still in force says that he could, that would have been utterly impracticable given the speed of events. In short, a judicial appointment, like that envisioned in S. 214, would have been counterproductive.

The judiciary in various districts has on a number of occasions in the past refused to appoint interim United States Attorneys under the pre-2006 law, and in other cases has appointed unqualified or unsuitable persons. Perhaps this reticence or ineffectiveness

suggests discomfort in the judiciary with respect to undertaking an executive function. It should suggest something else.

This Committee, in particular, but the Senate and the House of Representatives more generally, frequently are interested in what Main Justice and the United States Attorneys are doing in a number of areas of interest including health care fraud, public corruption and the exploitation of children, to name a few. Direct congressional oversight of the Justice Department and U.S. Attorneys offices presents certain difficulties and disputes, but is usually manageable. I respectfully suggest that it is far less likely that effective oversight of a judicially-appointed interim U.S. Attorney, or the court that appointed him or her, could be achieved. I think the Committee and the public would be better served by retaining in the Executive, an inherently Executive Branch prerogative, *i.e.*, the appointment of interim chief prosecutors.

Conclusion

As a reader of or listener to this testimony easily can gather, I do not see a problem with respect to the conduct of the Department of Justice, either in this administration or previously, that necessitates legislation to alter the current method of selection of interim United States Attorneys, or to change the way in which any administration selects, evaluates or replaces its officials. Many problems can be avoided or solved by rigorous adherence to the confirmation process both in terms of the President's promptly submitting U.S. Attorney nominations when vacancies are created, and this Committee's promptly conducting hearings.

Nor do I think that there is a federal prosecutorial system improperly influenced by political decision making. However, without reference to party, effectively separated

constitutional powers allow and require meaningful congressional oversight. Both the majority and minority members of this Committee are fully capable of conducting such inquiries of the Justice Department and need no new legislative tools to do so.

Mr. Chairman, I thank you and the Committee for listening to my comments and I am happy to answer whatever questions you have to the best of my ability.

HEARING STATEMENT

OAG000000473



Department of Justice

STATEMENT

OF

PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

**“PRESERVING PROSECUTORIAL INDEPENDENCE:
IS THE DEPARTMENT OF JUSTICE
POLITICIZING THE HIRING AND FIRING
OF U.S. ATTORNEYS?”**

PRESENTED ON

FEBRUARY 6, 2007

0AG000000474

**Testimony
of**

**Paul J. McNulty
Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States Senate**

“Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?”

February 6, 2007

Chairman Leahy, Senator Specter, and Members of the Committee, thank you for the invitation to discuss the importance of the Justice Department’s United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation’s laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for

confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment

of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney

vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district

courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

VIEWS LETTER ON S.214

OAG000000482



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 2, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to advise you of the Department of Justice's strong opposition to S. 214, the "Preserving United States Attorney Independence Act of 2007." S. 214 would significantly alter the manner in which U.S. Attorney vacancies are filled by completely removing the Attorney General's authority to appoint interim U.S. Attorneys and allocating that authority to an entirely different branch of government. Under S. 214, the Attorney General would have no authority whatsoever to fill a U.S. Attorney vacancy on an interim basis—even one of short duration. Instead, only the district court would have this authority.

United States Attorneys are at the forefront of the Department of Justice's law-enforcement efforts. They lead the charge to protect America from acts of terrorism; to reduce violent crime, including gun crime and gang crime; to fight illegal drug trafficking; to enforce immigration laws; to combat crimes that endanger children and families, including child pornography, obscenity, and human trafficking; and to ensure the integrity of government and of the marketplace by prosecuting corrupt government officials and perpetrators of corporate fraud. In pursuit of these objectives, U.S. Attorneys play a pivotal role coordinating with federal, State, and local law enforcement officials on many of these law enforcement issues. Additionally, they have significant administrative responsibilities, such as managing large offices of federal prosecutors and reporting directly to the Deputy Attorney General and the Attorney General. Importantly, U.S. Attorneys represent the Attorney General as the chief federal law enforcement officer in their respective communities. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of the U.S. Attorney at all times and in every district.

0AG000000483

The Department's principal objection to S.214 is that it would be inappropriate, and inconsistent with sound separation of powers principles, to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney under the circumstances described in the bill. Indeed, the Department is unaware of any other federal agency for which federal judges have such authority. As soon as a vacancy occurs, the federal court would be enabled to appoint a person of its choosing whose tenure would continue through the entire period needed for both a Presidential nomination and Senate confirmation. That judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General. The U.S. Attorneys, unlike the court-appointed independent counsel whose appointment survived separation of powers challenge in *Morrison v. Olson*, 487 U.S. 654 (1988), have wide-ranging, extensive authority over any number of matters. Among other things, they have played, and continue to play, a crucial role in investigations and prosecutions in the ongoing war on terrorism, where close coordination is critical. S. 214 would tend to fragment the exercise of such authority, thereby undermining the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement.

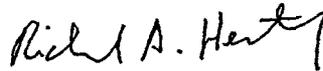
S. 214 would supersede last year's amendment to 28 U.S.C. § 546 that authorized the Attorney General to appoint an interim U.S. Attorney to serve until a person fills the position by being confirmed by the Senate and appointed by the President. Last year's amendment was intended to ensure continuity of operations in the event of a U.S. Attorney vacancy that lasts longer than expected. S. 214 would institute a new appointment regime without allowing the Attorney General's authority under current law to be tested in practice.

Before last year's amendment, the Attorney General could appoint an interim U.S. Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases in which a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in several recurring problems. For example, some district courts—recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim U.S. Attorney who would then have many matters before the court—refused to exercise the court's statutory appointment authority. Such refusals required the Attorney General to make multiple 120-day appointments. In contrast, other district courts—ignoring the oddity and inherent conflicts—sought to appoint as interim U.S. Attorney wholly unacceptable candidates who did not have the appropriate qualifications or the necessary clearances. S. 214 fails to ensure that such problems do not recur and, indeed, would exacerbate those problems by making appointment by the district court the exclusive means of filling U.S. Attorney vacancies.

S. 214 appears to be aimed at addressing a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district. To be sure, when a U.S. Attorney vacancy occurs, the Department must first determine who will serve temporarily as interim U.S. Attorney until a new Senate-confirmed U.S. Attorney is appointed. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on a temporary, interim basis. When neither the First Assistant U.S. Attorney nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees. At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate and the one that the Administration follows.

Thank you for the opportunity to present the Department's views on S. 214. The Office of Management and Budget advises that it has no objection to the presentation of this response from the standpoint of the Administration's program and that enactment of S. 214 would not be in accord with the program of the President. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Minority Member

The Honorable John Cornyn

S.214

0AG00000486

110TH CONGRESS
1ST SESSION

S. 214

To amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2007

Mrs. FEINSTEIN (for herself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Preserving United
5 States Attorney Independence Act of 2007".

6 **SEC. 2. VACANCIES.**

7 Section 546 of title 28, United States Code, is
8 amended to read as follows:

1 **“§ 546. Vacancies**

2 “The United States district court for a district in
3 which the office of the United States attorney is vacant
4 may appoint a United States attorney to serve until that
5 vacancy is filled. The order of appointment by the court
6 shall be filed with the clerk of the court.”

○

Q&A FROM DOJ 1/8/07
OVERSIGHT HEARING

FEINSTEIN:

Thank you.

You and I talked on Tuesday about what's happening with U.S. attorneys. And it spurred me to do a little research. And let me begin. Title 28, Section 541 states: "Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualified."

Now, I understand that there is a pleasure aspect to it. But I also understand what practice has been in the past.

We have 13 vacancies. Yesterday, you sent up two nominees for the 13 existing vacancies.

GONZALES:

We've now nominated, I think -- there have been 11 vacancies created since the law was changed; 11 vacancies in U.S. Attorneys' Offices. The president has now nominated as to six of those. As to the remaining five, we're in discussions with home-state senators.

And so let me publicly sort of preempt perhaps a question you're going to ask me, and that is: I am fully committed, as the administration's fully committed, to ensure that, with respect to every United States attorney position in this country, we will have a presidentially appointed, Senate-confirmed United States attorney.

GONZALES:

I think a United States attorney who I view as the leader, law enforcement leader, my representative in the community -- I think he has greater imprimatur of authority, if in fact that person's been confirmed by the Senate.

FEINSTEIN:

Now, let me get at where I'm going. How many United States attorneys have been asked to resign in the past year?

GONZALES:

Senator, you know, you're asking me to get into a public discussion about personnel...

0AG000000490

FEINSTEIN:

No, I'm just asking you to give me a number. That's all. I'm asking you to give me a number. I'm asking...

GONZALES:

You know, I don't know the answer to that question. But we have been very forthcoming...

FEINSTEIN:

You didn't know it on Tuesday when I spoke with you. said you would find out and tell me.

GONZALES:

I'm not sure I said that, but...

FEINSTEIN:

Yes, you did, Mr. Attorney General.

GONZALES:

Well, if that's what I said, then that's what I will do. But we did provide to you a letter where we gave you a lot of information about...

FEINSTEIN:

I read the letter.

GONZALES:

OK.

FEINSTEIN:

OAG000000491

It doesn't answer the questions that I have.

I know of at least six that have been asked to resign. I know that we amended the law in the Patriot Act and we amended it because if there were a national security problem, the attorney general would have the ability to move into the gap.

We did not amend it to prevent the confirmation process from taking place. And I'm very concerned. I've had two of them asked to resign in my state from major jurisdictions with major cases ongoing, with substantially good records as prosecutors.

And I'm very concerned, because, technically, under the Patriot Act, you can appoint someone without confirmation for the remainder of the president's term. I don't believe you should do that. We are going to try to change the law back.

GONZALES:

Senator, may I just say that I don't think there was any evidence that is what I'm trying to do. In fact, to the contrary, the evidence is quite clear that what we're trying to do is ensure that for the people in each of these respective districts we have the very best possible representative for the Department of Justice and that we are working to nominate people and that we are working with home state senators to get U.S. attorneys nominated.

So the evidence is just quite contrary to what your possibly suggesting.

Let me just say...

FEINSTEIN:

Do you deny that you have asked -- your office has asked United States attorneys to resign in the past year?

GONZALES:

Senator, that...

FEINSTEIN:

Yes or no?

GONZALES:

0AG000000492

Yes.

No, I don't deny that. What I'm saying is -- but that happens during every administration during different periods for different reasons.

And so the fact that that's happened, quite frankly, some people should view that as a sign of good management. What we do is we make an evaluation about the performance of individuals, and I have a responsibility to the people in your district that we have the best possible people in these positions.

And that's the reason why changes sometimes have to be made, although there are a number of reasons why changes get made and why people leave on their own.

I think I would never, ever make a change in a United States attorney for political reasons or if it would in any way jeopardize an ongoing serious investigation. I just would not do it.

FEINSTEIN:

Well, let me just say one thing. I believe very strongly that these positions should come to this committee for confirmation.

GONZALES:

They are, Senator.

FEINSTEIN:

I believe very strongly we should have the opportunity...

GONZALES:

I agree with you.

FEINSTEIN:

... to answer (sic) questions about...

GONZALES:

0AG000000493

I agree with you.

FEINSTEIN:

And I have been asked by another senator to ask this question, and I will: Was there any other reason for asking Bud Cummings of Arkansas to resign other than the desire to put in Tim Griffin?

GONZALES:

Senator, again, I'm not going to get into a public discussion about the merits or not with respect to personnel decisions.

I will say that I've had two conversations -- one as reconvened, I think, yesterday -- with a senator from Arkansas about this issue. He and I are in a dialogue. We are -- I am consulting with the home state senator so he understands what's going on and the reasons why, and working with him to try to get this thing resolved; to make sure for his benefit, for the benefit of the Department of Justice that we have the best possible person manning that position.

LEAHY:

I'm just wondering, during the -- when we take our break for lunch, would it be possible to get the numbers that Senator Feinstein has asked for?

GONZALES:

I think it's possible. I will certainly...

FEINSTEIN:

U.S. attorneys asked to resign.

GONZALES:

Senator, that's a number that I would like to share with you. I don't want to have a public discussion about personnel decisions. It's not fair, quite frankly, to the people.

LEAHY:

OAG000000494

I'm just curious as to the numbers. I don't care who they are. I want to know the numbers.

Thank you.

CORNBYN:

Thank you, Mr. Chairman.

Welcome, Attorney General Gonzales.

I want to talk a minute about the questions that Senator Feinstein raised about the process by which interim United States attorney are appointed, so that we can understand this better and perhaps put it in context.

My understanding that was prior to the reauthorization of the Patriot Act the attorney general had the authority to appoint an interim United States attorney for a period up to 120 days, wafter which the courts before the U.S. attorney would appear would make a longer-term interim appointment until such time as the president nominated and the Senate confirmed a permanent United States attorney.

CORNBYN:

Is that correct?

GONZALES:

That is correct. And as you might imagine, Senator, that created some issues that we were worried about. It would be like a federal judge deciding who was going to serve on your staff.

A U.S. attorney, of course, serves on my staff. And the other problems that we had is that there's an inherent conflict where you've got a U.S. attorney appearing before a court where he's been appointed by the judge.

And so that created a problem. We had, also, a problem, of judges, recognizing the oddity of the situation, who, kind of, would refuse to act.

And so we'd have to take action or give them a name or something. But it created some discomfort among some judges. Other judges were quite willing to make an appointment.

0AG000000495

Regrettably, though, you have a potential for a situation where someone is appointed who's never worked at the Department of Justice, doesn't have the necessary background check, can't get the necessary clearances.

And so that's a serious problem, particularly when you're at war, during a time of war.

And so, for these reasons, quite frankly, I think the change that was made in the re-authorization of the Patriot Act makes sense. And I've said to the committee today, under oath, that we are fully committed to try to find presidentially appointed, Senate-confirmed, U.S. attorneys for every position.

But they're too important to let go unfilled for any period of time, quite frankly. And it's very, very important for me, even on an interim basis, the qualification, the judgment of the individuals serving in that position.

QUESTION:

Well, Mr. Attorney General, this was not just, sort of, an odd arrangement before the re-authorization of the Patriot Act. It raised very serious concerns with regard to the separation powers doctrine under our Constitution, did it not?

GONZALES:

It does in mind. Again, it would be like a federal judge telling you, I'm putting this person on your staff.

CORNBYN:

The chief law enforcement officer for the district concerned. And the process that Senator Feinstein asked questions about that is now the norm, after the re-authorization of the Patriot Act -- that is something Congress itself embraced and passed by way of legislation and the president has signed into law.

Is that correct?

GONZALES:

I believe it reflects the policy decision, the will of the Congress, yes.

CORNBYN:

OAG000000496

And I find it a little unusual that some of our colleagues are critical of the Justice Department replacing Bush appointees with interim appointments, until such time as we can get a permanent United States attorney nominated by the president and confirmed by the committee.

I just want to raise three quick examples of delays, unfortunately not caused by the administration but by this committee itself in terms of confirming high-level nominees at the Justice Department: for example, Alice Fisher (ph) whose nomination waited a period of 17 months before this committee actually confirmed her nomination.

Then there's Kenneth Weinstein (ph), who was appointed to a brand new position, as you know, the head of the Counterterrorism (ph) Division at the Department of Justice.

This was a recommendation by the WMD commission and others. This nomination was obstructed for six months, until September 6, 2006, which allowed this new, important position to remain vacant for a half a year.

And then there's the inexplicable, to me, anyway, the case of Steve Bradbury, who serves in a very important position as head of the Office of Legal Counsel, acting, who's yet to be confirmed, even though he was nominated June 23, 2005.

And as you know, Mr. Bradbury was very integral to our efforts to deal with this issue of how do we try terrorist like Khalid Sheikh Mohammed, consistent with the Supreme Court's decisions and our Constitution.

So I appreciate your willingness to make sure that the administration nominates U.S. attorneys on a timely basis. Hopefully, this committee and the Congress, the Senate, will meet the administration more than halfway and schedule up-or-down votes on the nominees that the president sends forward.

SESSIONS:

There have been some complaints about replacements of United States attorneys. I served as a United States attorney for 12 years. I'm sure some people would like to have removed me before that.

But I am well aware that United States attorneys serve at the pleasure of the president. The United States attorneys that are being replaced here all, as I understand it, have served four years or more -- had four-year terms.

And we're now in the second term of this president. And I think, to make seven changes, I think, that's involved here, is not that many, and that the office of the United States attorney is a very important office, and it has tremendous management responsibilities and law enforcement responsibilities that cannot fail to meet standards.

And if someone is not producing, I think the president has every right to seek a change for that or other reasons that may come up.

GONZALES:

Can I just interrupt here?

SESSIONS:

Yes.

GONZALES:

I mean, there are constant changes in the ranks of our U.S. attorneys.

SESSIONS:

Absolutely. I...

GONZALES:

They come and go. And they leave for a variety of reasons. And so the fact that someone is leaving -- again, I don't want to get into personal details of individual attorneys.

I do want to say, however, that -- and I've said this publicly a lot, recently, it seems -- the U.S. attorney positions are very, very important to me, personally.

They are my representative in the community. They are the face of the administration, quite frankly. They're often viewed as the leader of the law enforcement effort within a community, not just by state and local but by other federal components.

And so I care very much about who my U.S. attorney is in a particular district. That's very, very important to me.

And so decisions with respect to U.S. attorneys are made on what's best for the department but also what's best for the people in the respective district.

SESSIONS:

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I fully understand that. And I know, in my district, where I used to be United States attorney, there was a vacancy occurred and someone left. And an interim was appointed. She was a professional prosecutor from -- in San Diego, Deborah Rhodes. She won great respect in the office and brought the office together when there had been problems.

And I'm pleased to say that Senator Shelby and I recommended to you, and you appointed her permanently, somebody who had never lived in the district before.

But I know you want the best type persons for those (inaudible). I would just note, though, that there have been complaints about United States attorneys. I'm aware some of them are not very aggressive. And they don't need to stay if they're not doing their job.

Here we had 14 House members expressing concerns about the U.S. attorney, Carol Lam, in San Diego, on the board of there, saying that they -- in effect, that she had a firm policy not to prosecute criminal aliens unless they have previously been convicted of two felonies in the district.

Well, I don't think that's justifiable.

GONZALES:

Senator...

SESSIONS:

Because I don't know if that had anything to do with her removal, but I know there were a series of 19 House members who wrote letters complaining about that performance.

And if that's so, I think change is necessary. Go ahead.

(LAUGHTER)

GONZALES:

Well, I was going to say, I'm not going to comment on those kind of reports, quite frankly.

SESSIONS:

I'm sure you're not.

GONZALES:

It's not fair to individuals. It's not fair to their privacy. And quite frankly, it's not fair to others who may have left for different reasons.

SESSIONS:

And with regard to the proposal that would change the United States attorney appointment that we discussed earlier -- I think the Feinstein amendment is not just re-establishing previous law; it goes beyond the previous law.

And I think, at this point, we don't have a basis to make that change. But would you agree it goes beyond the previous law?

GONZALES:

Quite frankly, Senator, I don't know what her amendment would do.

GONZALES:

I would have concerns if her amendment would require or allow a judge to make a decision about who's going to serve on my staff.

(CROSSTALK)

SESSIONS:

And if a United States attorney is appointed by the power -- and the U.S. attorney's part of the executive branch -- you would bring that nomination to the Senate for an up-or-down vote, would you not?

GONZALES:

Again -- I've said it before, but I'll say it again: I am fully committed to work with the Senate to ensure that we have presidentially appointed, Senate-confirmed U.S. attorneys in every district.

Now, these are, of course, very, very important. And I don't have the luxury of letting vacancies sit vacant. And so I have an obligation to the people in those districts to appoint interims.

And, of course, even though there may be an interim appointment, their judgment, their experience or qualifications are still, nonetheless, very, very important to me.

0AG000000500

SESSIONS:

You're exactly right.

WHITEHOUSE:

(OFF-MIKE)

Attorney General, it's nice to see you. Thank you for being here.

I'd like to start with an observation in response to the colloquy between you and Senator Feinstein. As a former United States attorney and somebody who as U.S. attorney had very active investigations into public corruption in Rhode Island, I share a bit the concern of the removal of U.S. attorneys under these circumstances.

And in your response you indicated that you would never do anything for -- I think you said -- political reasons, and you would certainly never do anything that would impede the ongoing investigation.

I would suggest to you that in your analysis of what the department's posture should be in these situations you should also consider the potential chilling effect on other United States attorney when a United States attorney who was involved in an ongoing public corruption case is removed from office. They are not easy cases to do technically, as you know. They are fraught with a lot of risk. And I think that U.S. attorneys show a lot of courage when they proceed with those cases, and any signal that might be interpreted or misinterpreted as discouraging those kinds of activities I think is one you'd want to be very, very careful about.

So I would propose to you that that's a consideration you should have in mind as you make those removal and reappointment decisions.

GONZALES:

It already is, but thank you, Senator. I appreciate that.

0AG000000501

CORRESPONDENCE

0AG00000502



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 31, 2007

The Honorable Mark Pryor
United States Senate
257 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Pryor:

This is in response to your letter to the Attorney General dated January 11, 2007, regarding the Attorney General's appointment of J. Timothy Griffin to serve as interim United States Attorney for the Eastern District of Arkansas.

As the Attorney General informed you in his telephone conversations with you on December 13, 2006, and December 15, 2006, Mr. Griffin was chosen for appointment to serve as interim United States Attorney because of his excellent qualifications. To be clear, Mr. Griffin was not chosen because the First Assistant United States Attorney was on maternity leave and therefore was not able to serve as your letter states. As you know, Mr. Griffin has federal prosecution experience both in the Eastern District of Arkansas and in the Criminal Division in Washington, D.C. During his service in the Eastern District of Arkansas, Mr. Griffin established that district's successful Project Safe Neighborhoods initiative to reduce firearms-related violence. In addition, Mr. Griffin has served for more than a decade in the U.S. Army Reserve, Judge Advocate General's Corps, for whom he has prosecuted more than 40 criminal cases, including cases of national significance. Mr. Griffin's military experience includes recent service in Iraq, for which he was awarded the Combat Action Badge and the Army Commendation Medal. Importantly, Mr. Griffin is a "real Arkansan" with genuine ties to the community. Based on these qualifications, Mr. Griffin was selected to serve as interim United States Attorney.

As the Attorney General also has stated to you, the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts. At no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

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The Eastern District of Arkansas is not different. As the Attorney General stated to you again two weeks ago, in a telephone conversation on January 17, 2007, the Administration is committed to having a Senate-confirmed United States Attorney in that district too. That is why the Administration has consulted with you and Senator Lincoln for several months now regarding possible candidates for nomination, including Mr. Griffin. That is why the Attorney General has sought your views as to whether, if nominated, you would support Mr. Griffin's confirmation. The Administration awaits your decision.

If you decide that you would support Mr. Griffin's confirmation, then the President's senior advisors (after taking into account Senator Lincoln's views) likely would recommend that the President nominate him. With your support, Mr. Griffin almost certainly would be confirmed and appointed. We are convinced that, given his strong record as a federal prosecutor and as a military prosecutor, Mr. Griffin would serve ably as a Senate-confirmed United States Attorney. If, in contrast, you decide that for whatever reason you will not support Mr. Griffin's confirmation, then the Administration looks forward to considering any alternative candidates for nomination that you might put forward. In any event, your views (and the views of Senator Lincoln) will be given substantial weight in determining what recommendation to make to the President regarding who is nominated.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Contrary to your letter, nothing in the text or history of the statute even suggests that the Attorney General should articulate a national security or law enforcement need for making an interim appointment. Because the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

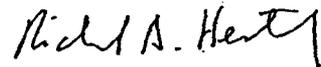
Enclosed is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time

Letter to the Honorable Mark Pryor

Page 3

that a United States Attorney vacancy has arisen, the President either has made a nomination or – as with the Eastern District of Arkansas – the Administration is working, in consultation with home-State Senators, to select a candidate for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Blanche L. Lincoln

Enclosure

OAG000000505

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- Erik Peterson – Western District of Wisconsin;
- Charles Rosenberg – Eastern District of Virginia;
- Thomas Anderson – District of Vermont;
- Martin Jackley – District of South Dakota;
- Alexander Acosta – Southern District of Florida;
- Troy Eid – District of Colorado;
- Phillip Green – Southern District of Illinois;
- George Holding – Eastern District of North Carolina;
- Sharon Potter – Northern District of West Virginia;
- Brett Tolman – District of Utah;
- Rodger Heaton – Central District of Illinois;
- Deborah Rhodes – Southern District of Alabama;
- Rachel Paulose – District of Minnesota;
- John Wood – Western District of Missouri; and
- Rosa Rodriguez-Velez – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 13 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 4 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- Central District of California – FAUSA George Cardona is acting United States Attorney
- Southern District of Illinois – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 8 of the 13 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 12 times since the authority was amended in March 2006.

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 8 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;

- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

112-1502 BA

MARK PRYOR
ARKANSAS

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United States Senate

WASHINGTON, DC 20510

257 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20540
(202) 224-2353

500 EMBROIDER CLAYTON AVENUE
SUITE 401
LITTLE ROCK, AR 72204
(501) 224-2356
TOLL FREE: (877) 253-5602
http://pryor.senate.gov

January 11, 2007

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Dear Attorney General Gonzales:

I am writing this letter to express my displeasure regarding your appointment of Tim Griffin as Interim U.S. Attorney for the Eastern District of Arkansas. As you will recall, we discussed this matter in two telephone calls (Wednesday December 13, 2006, and December 16, 2006) in which I informed you of my reservations.

First, it is clear (from events that occurred in July and August 2006), that there was an attempt to force then U.S. Attorney Cummins to resign. At that time, my office expressed my concern to the White House Counsel regarding this matter, and Mr. Cummins was able to remain in his position until the end of December. While I am pleased that his service was extended, I am left with the conclusion that the purpose for the dismissal of Mr. Cummins was to appoint Mr. Griffin.

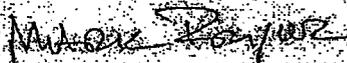
Second, I am astonished that the reason given by your office for the interim appointment is that the First Assistant U.S. Attorney is on maternity leave and therefore would not be able to perform the responsibilities of the appointment. This reason was given to my Chief of Staff, to the news media, and to me by your liaison on a meeting this week. This concerns me on several levels, but most importantly it uses pregnancy and motherhood as conditions that deny an appointment. While this may not be actionable in a public employment setting, it clearly would be in a private employment setting. The U.S. Department of Justice should never discriminate against women in this manner.

Finally, and most importantly, the appointment undermines the Senate confirmation process. The authority granted to the Attorney General to make an interim appointment for an indefinite time was given pursuant to the Patriot Act. I believe that in using this provision, the Attorney General should articulate a national security or law enforcement need that necessitates such an appointment. You have failed to do so in this case. In fact, as cited above, the reason articulated is at worst grossly deficient, and at best, a poor pretense.

For me personally this last point is most troublesome. When the Patriot Act was up for reauthorization, you called me and discussed the importance of its passage. I told you that while there were items in the Act that concerned me, I trusted that the spirit of the law would be upheld. It has also come to my attention that there may have been other similar appointments made under this provision of the Patriot Act. Therefore, I believe that the spirit of the law regarding this interim appointment (and perhaps others) has been violated. As such, I am pushing for a legislative change. I have signed on to a Bill that would strike the previous amended language and restore appointment authority to the original 120 days.

I am quite sure that you may not agree with some or all of my conclusions, therefore, I await your response and I appreciate your cooperation in this matter.

Sincerely,



Mark Pryor

Sent via facsimile



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 22, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

The Honorable Howard L. Berman
Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Conyers and Representative Berman:

This is in response to your letter, dated January 17, 2007, regarding Carol Lam's resignation as United States Attorney for the Southern District of California.

Your letter's suggestion that Ms. Lam was asked or encouraged to resign in an effort to disrupt an ongoing public corruption investigation is categorically untrue. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to disrupt any particular investigation, criminal prosecution or civil case – including any public corruption case. Any suggestion to the contrary simply is irresponsible. Indeed, the Attorney General has directed United States Attorneys to prosecute public corruption vigorously. A fair examination of the Department of Justice's performance in this area clearly demonstrates the Department's commitment to protect the integrity of government by rooting out public corruption – whenever it is found and whoever is implicated.

Moreover, the removal of a United States Attorney to impede an ongoing public corruption investigation would be entirely ineffective. Public corruption investigations typically involve many agents and prosecutors. The departure of the United States Attorney, for whatever reason, does not stop or even slow the investigation. Given the occasional turnover of United States Attorneys, career investigators and prosecutors exercise direct responsibility for nearly all such cases.

United States Attorneys serve at the pleasure of the President. Like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their

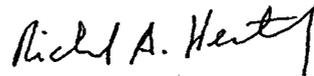
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Letter to Chairman Conyers and Representative Berman
January 22, 2007
Page 2

offices effectively. That on occasion in an organization as large as the Justice Department some United States Attorneys resign – for whatever reason – should come as no surprise.

With regard to the upcoming United States Attorney vacancy in the Southern District of California, the Department will select a person to serve temporarily as United States Attorney until a Senate-confirmed United States Attorney is appointed, and the Administration will consult with home-State Senators to select a person to be nominated, confirmed and appointed. Please be assured that both persons will be experienced lawyers who are committed to the Department's priorities – including the vigorous prosecution of public corruption.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Lamar S. Smith
Ranking Minority Member

0AG000000514

Congress of the United States
Washington, DC 20515

January 17, 2007

The Honorable Alberto Gonzales
U.S. Attorney General
Robert F. Kennedy Building
Washington, DC 20530

Dear Mr. Attorney General:

In the last week, we learned that the Administration has asked for the resignation of Carol Lam, United States Attorney for the Southern District of California. Ms. Lam announced yesterday that she has submitted her resignation effective February 15th.

Prior to her appointment as U.S. Attorney, Ms. Lam was a San Diego Superior Court Judge and a career prosecutor. Since her appointment as U.S. Attorney in 2002, we have heard no suggestion that she was either unqualified for the position or that she was guilty of misconduct in her office.

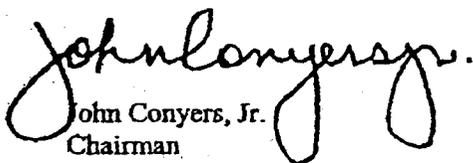
To the contrary, since word of the Administration's effort to remove Ms. Lam surfaced, reports in the San Diego Union-Tribune quote other prosecutors and defense lawyers as being "universally shocked" by her impending dismissal. San Diego's City Attorney called Lam, "the most outstanding U.S. Attorney we've ever had." The head of the FBI office in San Diego called Lam "crucial to the success of multiple ongoing investigations" adding that she "has an excellent reputation and has done an excellent job."

Given this praise and concern for the potential ramifications of her sudden departure, we are perplexed as to why you have chosen to remove Ms. Lam from the U.S. Attorneys' office in San Diego now. The one reason we've heard suggested for her dismissal was a decrease in immigration-related prosecutions, yet in the months of May, June and July of 2006, the U.S. Attorneys' Office in the Southern District of California was one of the top three USAOs in immigration prosecutions, hardly a record that would lead to removal.

At the moment, Ms. Lam is leading an office in the middle of a high-profile public corruption investigation. While the work on this investigation led to the conviction of former-Rep. Cunningham, a number of other corruption probes have grown out of the case and are still pending. We do not doubt that removing Ms. Lam from the U.S. Attorneys' office in San Diego now will disrupt this investigation.

Forcing Ms. Lam's resignation now leaves the appearance that this growing public corruption probe may be part of the Administration's motivation in removing her. If this is untrue, it is vitally important that this perception be corrected, and we ask you to share with us the basis of your request for her resignation.

Sincerely,


John Conyers, Jr.
Chairman
House Committee on the Judiciary


Howard L. Berman
Member
House Committee on the Judiciary

CONGRESSMAN
HOWARD L. BERMAN
 2221 Rayburn House Office Building
 Washington, D.C. 20515
 202-225-4695
 202-225-3196 (fax)
 (Facsimile Transmission Cover Sheet)

Date 11/17/07
 Fax# 202-514-4507

To Attorney General Alberto Gonzales

Number of pages (including cover sheet): 2

From:

<input checked="" type="checkbox"/> Howard L. Berman Member	<input type="checkbox"/> Gene Smith Chief of Staff	<input type="checkbox"/> Deanne Samuels Executive Secretary	<input type="checkbox"/> Doug Campbell Legis. Director
<input type="checkbox"/> Bari Schwartz Counsel	<input type="checkbox"/> Julia Massimino Legis. Counsel	<input type="checkbox"/> Shanna Winters Legis. Counsel	<input type="checkbox"/> Stephanie Williamson Legis. Assistant
<input type="checkbox"/> Jami Crespo Legis. Assistant	<input type="checkbox"/> Cong. Fellow	<input type="checkbox"/> Cong. Fellow	<input type="checkbox"/> Intern

Message: _____



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 16, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Feinstein:

This is in response to your letter, dated January 9, 2007, regarding the Administration's appointment of United States Attorneys.

United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. Discussions with United States Attorneys regarding their continued service generally are non-public, out of respect for those United States Attorneys; indeed, a public debate about the United States Attorneys that may have been asked or encouraged to resign only disserves their interests. In any event, please be assured that United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case. United States Attorneys are law

OAG000000518

Letter to Chairman Leahy and Senator Feinstein
January 16, 2007
Page 2

enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality.

The Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. When a vacancy in the office of United States Attorney occurs (because of removal, resignation or for any other reason), the Administration first must determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as acting or interim United States Attorney. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as acting or interim United States Attorney, or where their service would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with home-State Senators, on the selection, nomination and (hopefully) confirmation of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate unquestionably is the appointment method preferred by the Senate and the one that the Administration follows.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed per your request is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed,

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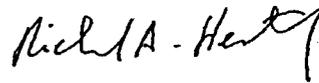
Letter to Chairman Leahy and Senator Feinstein

January 16, 2007

Page 3

every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

Enclosure

OAG000000520

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- Erik Peterson – Western District of Wisconsin;
- Charles Rosenberg – Eastern District of Virginia;
- Thomas Anderson – District of Vermont;
- Martin Jackley – District of South Dakota;
- Alexander Acosta – Southern District of Florida;
- Troy Eid – District of Colorado;
- Phillip Green – Southern District of Illinois;
- George Holding – Eastern District of North Carolina;
- Sharon Potter – Northern District of West Virginia;
- Brett Tolman – District of Utah;
- Rodger Heaton – Central District of Illinois;
- Deborah Rhodes – Southern District of Alabama;
- Rachel Paulose – District of Minnesota;
- John Wood – Western District of Missouri; and
- Rosa Rodriguez-Velez – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

- Central District of California – FAUSA George Cardona is acting United States Attorney (Cardona is not a candidate for presidential nomination; a nomination is not yet ready);
- Southern District of Illinois – FAUSA Randy Massey is acting United States Attorney (Massey is not a candidate for presidential nomination; a nomination was made last Congress, but confirmation did not occur);

- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL’S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of nine times since the authority was amended in March 2006. In two of the nine cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA’s 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same

FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick (Dedrick has expressed interest in presidential nomination; nomination is not yet ready).

In one case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen (Cohen is not a candidate for presidential nomination; nomination is not yet ready).

In the five remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

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United States Senate

WASHINGTON, DC 20510

January 9, 2007

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Gonzales:

Recently, it has come to our attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions by the end of the month, prior to the end of their terms without cause. We also understand the intention is to have your office appoint interim replacements and potentially avoid the Senate confirmation process altogether.

We are very concerned about this allegation, and we believe, if true, such actions would be intemperate and ill-advised. We have asked our staffs to look into changing the law to prevent such actions and are introducing legislation today that will return the law to its previous language providing a district court with the authority to appoint an interim U.S. Attorney for the district in which a vacancy arises. Therefore, we ask that if such requests have been made that you desist from moving forward with these efforts and hold the requests in abeyance.

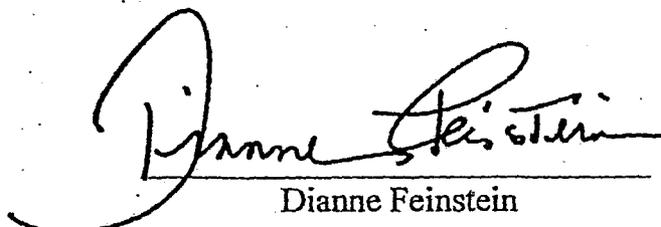
As you know, U.S. Attorneys around the country serve important functions bringing many of the most important and difficult cases. Our U.S. Attorneys are responsible for taking the lead on public corruption cases and many of the anti-terrorism efforts across the country. U.S. Attorneys also play a vital role in combating traditional crimes like narcotics trafficking, bank robbery, guns, violence, environmental crime, civil rights violations and fraud. U.S. Attorneys are also taking the lead on prosecuting computer hacking, Internet fraud and intellectual property theft; accounting and securities fraud and computer chip theft. Continuity in these positions is of utmost importance, and freedom from any inappropriate influences or the appearance of influence must be avoided at all costs.

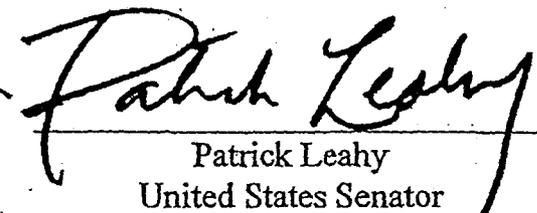
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Please provide information regarding all instances in which you have exercised the authority to appoint an interim United States Attorney. In addition, please provide us with information on whether any efforts have been made to ask or encourage the former or current U.S. Attorneys to resign their position.

We would appreciate your prompt attention to this matter and written answers prior to your appearance before the Judiciary Committee on January 18, 2007. Please contact us or Senator Feinstein's chief counsel, Jennifer Duck (202-224-6975), should you have any questions.

Sincerely yours,


Dianne Feinstein
United States Senator


Patrick Leahy
United States Senator

OAG000000525

FEINSTEIN STATEMENT

OAG000000526



Senator Feinstein Concerned over Resignations of at Least Seven U.S. Attorneys Across the Country

- Senator Feinstein to question Attorney General Gonzalez
at Judiciary Committee Hearing later this week -

January 16, 2007

Washington, DC – *In a speech on the Senate Floor, U.S. Senator Dianne Feinstein (D-Calif.) today expressed concern about the fact that a number of U.S. Attorneys have been asked by the Department of Justice to resign their positions prior to the end of their terms and without cause.*

In a little noticed provision included in the Patriot Act reauthorization last year, the Administration's authority to appoint interim U.S. Attorneys was greatly expanded. The law was changed so that if a vacancy arises the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process

Senators Feinstein, Patrick Leahy (D-Vt.), and Mark Pryor (D-Ark.) last week introduced the Preserving United States Attorney Independence Act, which would prevent further circumvention of the Senate's constitutional prerogative to confirm U.S. Attorneys and restore appointment authority to the appropriate District Courts.

The full text of Senator Feinstein's floor statement follows.

Recent newspaper articles have detailed the circumstances surrounding the departure of several U.S. Attorneys across the country:

- **Politicizing Prosecutors:** “United States attorneys are so powerful that their impartiality must be beyond question. One way to ensure that is to require them to submit to questions from the Senate, and face a confirmation vote.” *New York Times* – 1/15/07.
www.nytimes.com/2007/01/15/opinion/15mon2.html?_r=1&oref=slogin
- **U.S. Attorney Vacancies Spark Concerns:** “As the Bush administration enters its last two years, a number of U.S. attorneys are departing, causing concern that some high-profile prosecutions may suffer. As many as seven U.S. attorneys. . . are leaving or being pushed out.” *Wall Street Journal* – 1/16/07.
http://online.wsj.com/google_login.html?url=http%3A%2F%2Fonline.wsj.com%2Farticle%2F%2FSB116891552371177295.html%3Fmod%3Dgooglenews_wsj

- **Lam is Asked to Step Down:** "The Bush administration has quietly asked San Diego U.S. Attorney Carol Lam, best known for her high-profile prosecutions of politicians and corporate executives, to resign her post, a law enforcement official said." *San Diego Union Tribune* – 1/12/07.
http://weblog.signonsandiego.com/uniontrib/20070112/news_1n12lam.html
- **Nevada U.S. Attorney Given Walking Papers:** "The Bush administration has forced Daniel Bogden out of his position as U.S. attorney for the District of Nevada, Nevada's two senators said Sunday." *Las Vegas Review Journal* – 1/16/07.
www.reviewjournal.com/lvrj_home/2007/Jan-15-Mon-2007/news/11980257.html

The following is a transcript of Senator Feinstein's floor speech:

"Mr. President, I have introduced an amendment on this bill which has to do with the appointment of U.S. Attorneys. This is also the subject of the Judiciary Committee's jurisdiction, and since the Attorney General himself will be before that committee on Thursday, and I will be asking him some questions, I speak today in morning business on what I know so much about this situation.

Recently, it came to my attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions – some by the end of this month – prior to the end of their terms not based on any allegation of misconduct. In other words, they are forced resignations.

I have also heard that the Attorney General plans to appoint interim replacements and potentially avoid Senate confirmation by leaving an interim U.S. Attorney in place for the remainder of the Bush administration.

How does this happen? The Department sought and essentially was given new authority under a little known provision in the PATRIOT Act Reauthorization to appoint interim appointments who are not subject to Senate confirmation and who could remain in place for the remainder of the Bush administration.

To date, I know of at least seven U.S. Attorneys forced to resign without cause, without any allegations of misconduct. These include two from my home State, San Diego and San Francisco, as well as U.S. Attorneys from New Mexico, Nevada, Arkansas, Texas, Washington and Arizona.

In California, press reports indicate that Carol Lam, U.S. Attorney for San Diego, has been asked to leave her position, as has Kevin Ryan of San Francisco. The public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988, has said, 'This is like nothing I've ever seen in my 35-plus years.'

He went on to say that while the President has the authority to fire a U.S. Attorney for any reason, it is 'extremely rare' unless there is an allegation of misconduct.

To my knowledge, there are no allegations of misconduct having to do with Carol Lam. She is a distinguished former judge. Rather, the only explanation I have seen are concerns that were expressed about prioritizing public corruption cases over smuggling and gun cases.

The most well-known case involves a U.S. Attorney in Arkansas. Senators Pryor and Lincoln have raised significant concerns about how "Bud" Cummins was asked to resign and in his place the administration appointed their top lawyer in charge of political opposition research, Tim Griffin. I have been told Mr. Griffin is quite young, 37, and Senators Pryor and Lincoln have expressed concerns about press reports that have indicated Mr. Griffin has been a political operative for the RNC.

While the administration has confirmed that 5 to 10 U.S. Attorneys have been asked to leave, I have not been given specific details about why these individuals were asked to leave. Around the country, though, U.S. Attorneys are bringing many of the most important and complex cases being prosecuted. They are responsible for taking the lead on public corruption cases and many of the antiterrorist efforts in the country. As a matter of fact, we just had the head of the FBI, Bob Mueller, come before the Judiciary Committee at our oversight hearing and tell us how they have dropped the priority of violent crime prosecution and, instead, are taking up public corruption cases; ergo, it only follows that the U.S. Attorneys would be prosecuting public corruption cases.

As a matter of fact, the rumor has it -- and this is only rumor -- that U.S. Attorney Lam, who carried out the prosecution of the Duke Cunningham case, has other cases pending whereby, rumor has it, Members of Congress have been subpoenaed. I have also been told that this interrupts the flow of the prosecution of these cases, to have the present U.S. attorney be forced to resign by the end of this month.

Now, U.S. Attorneys play a vital role in combating traditional crimes such as narcotics trafficking, bank robbery, guns, violence, environmental crimes, civil rights, and fraud, as well as taking the lead on prosecuting computer hacking, Internet fraud, and intellectual property theft, accounting and securities fraud, and computer chip theft.

How did all of this happen? This is an interesting story. Apparently, when Congress reauthorized the PATRIOT Act last year, a provision was included that modified the statute that determines how long interim appointments are made. The PATRIOT Act Reauthorization changed the law to allow interim appointments to serve indefinitely rather than for a limited 120 days. Prior to the PATRIOT Act Reauthorization and the 1986 law, when a vacancy arose, the court nominated an interim U.S. Attorney until the Senate confirmed a Presidential nominee. The PATRIOT Act Reauthorization in 2006 removed the 120-day limit on that appointment, so now the Attorney General can nominate someone who goes in without any confirmation hearing by this Senate and serve as U.S. Attorney for the remainder of the President's term in office. This is a way, simply stated, of avoiding a Senate confirmation of a U.S. Attorney.

The rationale to give the authority to the court has been that since district court judges are also subject to Senate confirmation and are not political positions, there is greater likelihood that their choice of who should serve as an interim U.S. Attorney would be chosen based on merit and not manipulated for political reasons. To me, this makes good sense.

Finally, by having the district court make the appointments, and not the Attorney General, the process provides an incentive for the administration to move quickly to appoint a replacement and to work in cooperation with the Senate to get the best qualified candidate confirmed.

I strongly believe we should return this power to district courts to appoint interim U.S. Attorneys. That is why last week, Senator Leahy, the incoming Chairman of the Judiciary Committee, the Senator from Arkansas, Senator Pryor, and I filed a bill that would do just that. Our bill simply restores the statute to what it once was and gives the authority to appoint interim U.S. Attorneys back to the district court where the vacancy arises.

I could press this issue on this bill. However, I do not want to do so because I have been saying I want to keep this bill as clean as possible, that it is restricted to the items that are the purpose of the bill, not elections or any other such things. I ought to stick to my own statement.

Clearly, the President has the authority to choose who he wants working in his administration and to choose who should replace an individual when there is a vacancy. But the U.S. Attorneys' job is too important for there to be unnecessary disruptions, or, worse, any appearance of undue influence. At a time when we are talking about toughening the consequences for public corruption, we should change the law to ensure that our top prosecutors who are taking on these cases are free from interference or the appearance of impropriety. This is an important change to the law. Again, I will question the Attorney General Thursday about it when he is before the Judiciary Committee for an oversight hearing.

I am particularly concerned because of the inference in all of this that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. Attorney. In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor. Therefore, it is surprising to me to see that she would be, in effect, forced out, without cause. This would go for any other U.S. Attorney among the seven who are on that list.

We have something we need to look into, that we need to exercise our oversight on, and I believe very strongly we should change the law back to where a Federal judge makes this appointment on an interim basis subject to regular order, whereby the President nominates and the Senate confirms a replacement"

EDITORIALS

Politics and prosecutors

Chicago Tribune

January 22, 2007

EDITORIAL

The appointment of federal prosecutors is not normally a subject that generates much controversy. But some 11 U.S. attorneys have left in the last 10 months, some of them at the request of the Justice Department, and critics charge the White House is purging the ranks for political reasons, while installing administration cronies in their place. Lending credence to these charges is a change in the law made last year that allows the attorney general to install successors without going through Senate confirmation. Sen. Dianne Feinstein (D-Calif.) accuses President Bush of "pushing out U.S. attorneys from across the country under a cloak of secrecy and then appointing indefinite replacements."

We enjoy a good conspiracy theory as much as anyone, but in this case, the evidence is pretty thin. Keep in mind that the prosecutors being replaced are themselves Bush appointees--which casts doubt on the idea that political motivations are at work. U.S. attorneys serve at the pleasure of the president, and it's not unusual for them to leave because they have other career plans--or for the attorney general to relieve prosecutors whose performance he finds unsatisfactory. As for trying to operate without Senate approval, Atty. Gen. Alberto Gonzales did all he could to dispel that fear when he appeared Thursday before the Senate Judiciary Committee.

"I am fully committed, as the administration's fully committed, to ensure that, with respect to every United States attorney position in the country, we will have a presidentially appointed, Senate-confirmed United States attorney," he said. When Feinstein said she thinks the Senate should get to review all appointments, he replied, "I agree with you." The Justice Department also notes that since the law was changed, the president has sent 15 nominees to the Senate. So much for the charge of plotting to circumvent the usual process.

Whether the administration has made sound appointments is subject to debate. Critics are particularly suspicious of Timothy Griffin, a former aide to the Republican National Committee, who was named to the job in the Eastern District of Arkansas. But Griffin has also served as an Army prosecutor and a special assistant U.S. attorney. If he is shown to be unsuitable for the job for one reason or another, the Senate can vote him down.

Another alleged victim of the purge is Carol Lam of San Diego, who prosecuted GOP Rep. Randy "Duke" Cunningham of California for bribery. But her dismissal may have something to do with the sharp drop in the number of prosecutions during her term, or with the complaints of Border Patrol agents that she gives low priority to prosecuting illegal immigrants.

Senators are free to pursue issues like these during confirmation and oversight hearings. But for the moment, the administration deserves better than the presumption of guilt.

OAG000000532

Los Angeles Times editorial
January 26, 2007

The rumor bill

Sen. Dianne Feinstein's concerns about the departure of a high-profile U.S. attorney are premature.

IT'S NEVER A good idea to write legislation in response to a rumor, yet that's exactly what Sen. Dianne Feinstein appears to have done in the case of Carol Lam. Lam is the U.S. attorney in San Diego who oversaw the prosecution of former Rep. Randy "Duke" Cunningham, who pleaded guilty to receiving \$2.4 million in bribes from military contractors and evading more than \$1 million in taxes. Lam is one of half a dozen U.S. attorneys, including one in San Francisco, who are stepping down.

Feinstein at least acknowledges that she is responding to a rumor that Lam is being forced out not because of policy or personality differences with her superiors but because she is preparing other cases that might ruffle influential feathers. Lam's office has been investigating a politically connected defense contractor who was described as an unindicted co-conspirator in the Cunningham case.

This conspiracy theory has another strand: a suddenly controversial provision in the Patriot Act that allows the attorney general to name an acting U.S. attorney who can serve until the Senate confirms a new nominee. Feinstein has proposed a bill that would restore the previous arrangement, in which local federal judges named U.S. attorneys on an interim basis.

The Justice Department persuasively argues that it hasn't abused its new authority to bypass the usual Senate confirmation process. Even after they are confirmed by the Senate, U.S. attorneys still serve at the president's pleasure, and they can be removed if they are underperforming or if their priorities conflict with the administration's.

A further problem with the conspiracy theory is that it is not easy, as even Watergate demonstrated, for an administration to stymie a criminal investigation. If the Bush administration has been scheming to prevent the prosecution of prominent Republicans, it has been remarkably unsuccessful: Just ask Cunningham, former Rep. Bob Ney or I. Lewis "Scooter" Libby.

Where politics undeniably plays a role — and not just in this administration — is in the selection of U.S. attorneys, who often are prominent members of the president's party. Yet precisely because these positions are political plums, professionals in the Justice Department and the FBI traditionally exert huge influence in prosecution decisions. Those same professionals are likely to blow the whistle on improper interference.

Feinstein and other senators certainly should keep their ears pricked for any such alarm. They also should press Atty. Gen. Alberto R. Gonzales to explain the personnel changes

(in closed session if necessary) and to abide by his commitment to the Judiciary Committee that the names of new U.S. attorneys be submitted expeditiously to the Senate. But cries of a conspiracy are premature, and so is Feinstein's legislation.

The Pot Calling the Kettle "Interim"

Democrats with short memories rail about Bush's removal of U.S. attorneys.

By Andrew C. McCarthy

In lambasting the Bush administration for politicizing the appointment of the nation's United States attorneys, Democrats may be on the verge of redefining *chutzpah*.

The campaign is being spearheaded on the Judiciary Committee by Senator Dianne Feinstein. She contends that at least seven U.S. attorneys — tellingly, including those for two districts in her home state — have been “forced to resign without cause.” They are, she further alleges, to be replaced by Bush appointees who will be able to avoid Senate confirmation thanks to a “little known provision” of the Patriot Act reauthorization law enacted in 2006.

Going into overdrive, Feinstein railed on the Senate floor Tuesday that “[t]he public response has been shock. Peter Nunez, who served as the San Diego U.S. Attorney from 1982 to 1988 has said, ‘This is like nothing I’ve ever seen in my 35-plus years.’”

Yes, the public, surely, is about as “shocked, shocked” as Claude Raines’s Captain Renault, and one is left to wonder whether Mr. Nunez spent the 1990s living under a rock.

One of President Clinton’s very first official acts upon taking office in 1993 was to fire *every* United States attorney then serving — except one, Michael Chertoff, now Homeland Security secretary but then U.S. attorney for the District of New Jersey, who was kept on only because a powerful New Jersey Democrat, Sen. Bill Bradley, specifically requested his retention.

Were the attorneys Clinton fired guilty of misconduct or incompetence? No. As a class they were able (and, it goes without saying, well-connected). Did he shove them aside to thwart corruption investigations into his own party? No. It was just politics, plain and simple.

Patronage is the chief spoil of electoral war. For a dozen years, Republicans had been in control of the White House, and, therefore of the appointment of all U.S. attorneys. President Clinton, as was his right, wanted his party’s own people in. So he got rid of the Republican appointees and replaced them with, predominantly, Democrat appointees (or Republicans and Independents who were acceptable to Democrats).

We like to think that law enforcement is not political, and for the most part — the day-to-day part, the proceedings in hundreds of courtrooms throughout the country — that is

true. But appointments are, and have always been political. Does it mean able people are relieved before their terms are up? Yes, but that is the way the game is played.

Indeed, a moment's reflection on the terms served by U.S. attorneys reveals the emptiness of Feinstein's argument. These officials are appointed for four years, with the understanding that they serve at the pleasure of the president, who can remove them for any reason or no reason. George W. Bush, of course, has been president for six years. That means every presently serving U.S. attorney in this country has been appointed or reappointed by this president.

That is, contrary to Clinton, who unceremoniously cashiered virtually all Reagan and Bush 41 appointees, the current President Bush can only, at this point, be firing *his own appointees*. Several of them, perhaps even all of them, are no doubt highly competent. But it is a lot less unsavory, at least at first blush, for a president to be rethinking his own choices than to be muscling out another administration's choices in an act of unvarnished partisanship.

Feinstein's other complaint, namely, that the Bush administration is end-running the Constitution's appointment process, which requires Senate confirmation for officers of the United States (including U.S. attorneys), is also unpersuasive.

As she correctly points out, the Patriot Act reauthorization did change prior law. Previously, under the federal code (Title 28, Section 546), if the position of district U.S. attorney became vacant, it could be filled for up to 120 days by an interim appointee selected by the attorney general. What would happen at the end of that 120-day period, if a new appointee (who would likely also be the interim appointee) had not yet been appointed by the president and confirmed by the senate? The old law said the power to appoint an interim U.S. attorney would then shift to the federal district court, whose appointee would serve until the president finally got his own nominee confirmed.

This was a bizarre arrangement. Law enforcement is exclusively an executive branch power. The Constitution gives the judiciary no role in executive appointments, and the congressional input is limited to senate confirmation. U.S. attorneys are important members of the Justice Department — the top federal law enforcement officers in their districts. But while the attorney general runs the Justice Department, U.S. attorneys work not for the AG but for the president. They are delegated to exercise executive authority the Constitution reposes only in the president, and can thus be terminated at will by the president. Consequently, having the courts make interim appointments made no practical sense, in addition to being constitutionally dubious.

The Patriot Act reauthorization remedied this anomaly by eliminating both the role of the district courts and the 120-day limit on the attorney general's interim appointments. The interim appointee can now serve until the senate finally confirms the president's nominee.

Is there potential for abuse here? Of course — there's no conceivable appointments

structure that would not have potential for abuse. Like it or not, in our system, voters are the ultimate check on political excess.

So yes, a president who wanted to bypass the Constitution's appointments process could fire the U.S. attorney, have the attorney general name an interim appointee, and simply refrain from submitting a nominee to the senate for confirmation. But we've also seen plenty of abuse from the Senate side of appointments — and such abuse was not unknown under the old law. Though the president can nominate very able U.S. attorney candidates — just as this president has also nominated very able *judicial* candidates — those appointments are often stalled in the confirmation process by the senate's refusal to act, its imperious blue-slip privileges (basically, a veto for senators from the home state of the nominee), and its filibusters.

But that's politics. The president tries to shame the senate into taking action on qualified nominees. Senator Feinstein, now, is trying to shame the White House — making sure the pressure is on the administration not to misuse the Patriot Act modification as an end-around the confirmation process.

Why is Feinstein doing this? After all, the next president may be a Democrat and could exploit to Democratic advantage the same perks the Bush administration now enjoys.

Well, because Feinstein is not going to be the next president. She is still going to be a senator and clearly intends to remain a powerful one. Aside from being enshrined in the Constitution, the confirmations process is a significant source of senatorial power no matter who the president is. Practically speaking, confirmation is what compels a president of either party to consult senators rather than just peremptorily installing the president's own people. Over the years, it has given senators enormous influence over the selection of judges and prosecutors in their states. Feinstein does not want to see that power diminished.

It's worth noting, however, that the same Democrats who will be up in arms now were mum in the 1990s. President Clinton not only fired U.S. attorneys sweepingly and without cause. He also appointed high executive-branch officials, such as Justice Department civil-rights division chief Bill Lann Lee, on an "acting" basis even though their positions called for senate confirmation. This sharp maneuver enabled those officials to serve even though it had become clear that they would never be confirmed.

Reporting on Lee on February 26, 1998, the *New York Times* noted: "Under a Federal law known as the Vacancy Act, a person may serve in an acting capacity for 120 days. But the [Clinton] Administration has argued that another Federal law supercedes the Vacancy Act and gives the Attorney General the power to make temporary law enforcement assignments of any duration."

What the Clinton administration dubiously claimed was the law back then is, in fact, the law right now. Yet, for some strange reason — heaven knows what it could be — Senator Feinstein has only now decided it's a problem. Like the public, I'm shocked.

— Andrew C. McCarthy is a senior fellow at the Foundation for the Defense of Democracies.

Politics and the Corruption Fighter

The New York Times

January 18, 2007

EDITORIAL

Abstract: Editorial scores Bush administration for removing several United States attorneys from their jobs; cites removal of US Atty Carol Lam, prosecutor who was investigating Rep Jerry Lewis

In its secretive purge of key United States attorneys, the Bush administration is needlessly giving comfort to any number of individuals now under federal investigation. Most prominently, there is Representative Jerry Lewis, the California Republican whose dealings as appropriations chairman have been under scrutiny in the continuing investigation of lawmakers delivering quid pro quo favors for contractors and lobbyists.

U.S. Attorney Carol Lam of San Diego is one of a number of prosecutors (there's no official tally) being forced from office without the courtesy of an explanation. A career professional, Ms. Lam ran a first-rate investigation of Randy Cunningham, the former Republican congressman from California, who admitted taking more than \$2.4 million in bribes.

Ms. Lam then turned her attention to Mr. Lewis as she plumbed Congress's weakness for "earmarks" -- legislation that lawmakers customize on behalf of deep-pocketed campaign contributors. The focus moved to Mr. Lewis -- who has denied any wrongdoing -- after the disclosure that one of his staff aides became a lobbyist and arranged windfall contracts worth hundreds of millions.

Stymied by the previous Republican Congress, Ms. Lam was negotiating with the new Democratic leadership to obtain extensive earmarks documentation for her investigation when the administration forced her resignation.

Legal professionals are defending Ms. Lam, with the F.B.I. chief in San Diego asking: "What do you expect her to do? Let corruption exist?" It's especially alarming that the White House can use a loophole in the Patriot Act to name a successor who will not have to face questions or confirmation by the Senate. The administration owes the nation a full explanation of a move that reeks of politics.

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Surging And Purging

0AG000000537

The New York Times
January 19, 2007

EDITORIAL

Abstract: Paul Krugman Op-Ed column says dismissals of several federal prosecutors show Bush administration is trying to protect itself from corruption investigations by purging independent-minded US attorneys; cites sudden replacement of Arkansas prosecutor Bud Cummings by J Timothy Griffin, Republican operative for Karl Rove; notes list also includes Carol Lam, who successfully prosecuted congressman Duke Cunningham; sees purges as pre-emptive strike against gathering forces of justice and mocks Atty Gen Alberto Gonzales's denials (M)

There's something happening here, and what it is seems completely clear: the Bush administration is trying to protect itself by purging independent-minded prosecutors.

Last month, Bud Cummins, the U.S. attorney (federal prosecutor) for the Eastern District of Arkansas, received a call on his cellphone while hiking in the woods with his son. He was informed that he had just been replaced by J. Timothy Griffin, a Republican political operative who has spent the last few years working as an opposition researcher for Karl Rove.

Mr. Cummins's case isn't unique. Since the middle of last month, the Bush administration has pushed out at least four U.S. attorneys, and possibly as many as seven, without explanation. The list includes Carol Lam, the U.S. attorney for San Diego, who successfully prosecuted Duke Cunningham, a Republican congressman, on major corruption charges. The top F.B.I. official in San Diego told The San Diego Union-Tribune that Ms. Lam's dismissal would undermine multiple continuing investigations.

In Senate testimony yesterday, Attorney General Alberto Gonzales refused to say how many other attorneys have been asked to resign, calling it a "personnel matter."

In case you're wondering, such a wholesale firing of prosecutors midway through an administration isn't normal. U.S. attorneys, The Wall Street Journal recently pointed out, "typically are appointed at the beginning of a new president's term, and serve throughout that term." Why, then, are prosecutors that the Bush administration itself appointed suddenly being pushed out?

The likely answer is that for the first time the administration is really worried about where corruption investigations might lead.

Since the day it took power this administration has shown nothing but contempt for the normal principles of good government. For six years ethical problems and conflicts of interest have been the rule, not the exception.

For a long time the administration nonetheless seemed untouchable, protected both by

Republican control of Congress and by its ability to justify anything and everything as necessary for the war on terror. Now, however, the investigations are closing in on the Oval Office. The latest news is that J. Steven Griles, the former deputy secretary of the Interior Department and the poster child for the administration's systematic policy of putting foxes in charge of henhouses, is finally facing possible indictment.

And the purge of U.S. attorneys looks like a pre-emptive strike against the gathering forces of justice.

Won't the administration have trouble getting its new appointees confirmed by the Senate? Well, it turns out that it won't have to.

Arlen Specter, the Republican senator who headed the Judiciary Committee until Congress changed hands, made sure of that last year. Previously, new U.S. attorneys needed Senate confirmation within 120 days or federal district courts would name replacements. But as part of a conference committee reconciling House and Senate versions of the revised Patriot Act, Mr. Specter slipped in a clause eliminating that rule.

As Paul Kiel of TPMmuckraker .com -- which has done yeoman investigative reporting on this story -- put it, this clause in effect allows the administration "to handpick replacements and keep them there in perpetuity without the ordeal of Senate confirmation." How convenient.

Mr. Gonzales says that there's nothing political about the firings. And according to The Associated Press, he said that district court judges shouldn't appoint U.S. attorneys because they "tend to appoint friends and others not properly qualified to be prosecutors." Words fail me.

Mr. Gonzales also says that the administration intends to get Senate confirmation for every replacement. Sorry, but that's not at all credible, even if we ignore the administration's track record. Mr. Griffin, the political-operative-turned-prosecutor, would be savaged in a confirmation hearing. By appointing him, the administration showed that it has no intention of following the usual rules.

The broader context is this: defeat in the midterm elections hasn't led the Bush administration to scale back its imperial view of presidential power.

On the contrary, now that President Bush can no longer count on Congress to do his bidding, he's more determined than ever to claim essentially unlimited authority -- whether it's the authority to send more troops into Iraq or the authority to stonewall investigations into his own administration's conduct.

The next two years, in other words, are going to be a rolling constitutional crisis.

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OAG000000539

No way to appoint justice
THE SAN FRANCISCO CHRONICLE
January 25, 2007

EDITORIAL

THE RECENT resignation of Kevin Ryan as U.S. attorney for the Northern District of California probably didn't happen because Ryan wasn't partisan enough. Unfortunately, given the rush of U.S. attorneys' resignations during the last few months, there's no way to be sure.

Curious things are afoot in the Justice Department, thanks to an overlooked provision of the renewed Patriot Act, which allows U.S. Attorney General Alberto Gonzales to indefinitely appoint new U.S. attorneys without Senate confirmation. Michael Teague, communications director for Arkansas Sen. Mark Pryor, said that when it came up for discussion, senators were told that the power would only be used in case of emergencies - - such as if a U.S. attorney was killed in a terrorist attack, for example, and a quick substitute was necessary.

It hasn't worked out that way.

In Arkansas, a well-respected and effective U.S. attorney has been replaced with a political partisan whose qualifications seem thin. In New Mexico, the U.S. attorney said he was asked to leave without explanation. In Nevada, the recently resigned U.S. attorney cited "political" reasons for his departure. That same week in California, saw the departures of not just Ryan, but also the U.S. attorney in San Diego -- who had been criticized for not prosecuting enough gun and immigration violations. Most of their successors have not been named, but if Arkansas is any indication, things look nasty for justice in America.

With U.S. attorneys responsible for so many crucial prosecutions -- including terrorism, violent crime and civil rights -- they should be held to the highest standards. If they aren't, the fallout will be tremendous -- in Arkansas, a defense attorney has filed a motion against the new appointee, declaring his appointment unconstitutional. If we can't believe in the credibility of our U.S. attorneys, how can we believe in the credibility of the courts?

Sen. Dianne Feinstein, D-Calif., is co-sponsoring a bill to restore appointment authority to the U.S. District Courts, thereby removing politics altogether. We couldn't agree more.

Politics v. Justice
St. Louis Post-Dispatch (MO)
January 23, 2007

Editorial

0AG000000540

Last October, when Harry E. "Bud" Cummins III, the U.S. attorney for the Eastern District of Arkansas, closed his investigation into the way Missouri Gov. Matt Blunt's administration handled Missouri's license fee offices, he emphasized, "This office does not intend to elaborate further about this closed matter."

We hope that now will change. Mr. Cummins was identified last week as one of at least nine U.S. attorneys around the country who had been asked by the Bush administration to resign so they could be replaced by new political appointees. Among the nine are prosecutors who had been pursuing corruption cases against Republican office-holders and contributors.

The message, spoken or unspoken, in the requests for resignations, was "back off of our pals."

Mr. Cummins, who was replaced last week by J. Timothy Griffin, a former operative for White House political director Karl Rove, said that he'd been asked to step down in June. That would have been the time when the fee office investigation was in full swing.

The investigation followed news reports that young staffers and politically connected friends of Mr. Blunt had created management companies to benefit from the sale of drivers licenses and license plates. Another aspect of the story, one never mentioned when the investigation was dismissed, was that Mr. Blunt's office had steered state agencies to politically connected lobbyists.

Among the other U.S. attorneys asked to resign were Carol Lam in San Diego and Kevin Ryan in San Francisco. Ms. Lam sent former Republican Rep. Randy "Duke" Cunningham to prison for bribery and now is investigating Rep. Jerry Lewis, R-Calif., the former chairman of the House Appropriations Committee. Mr. Ryan made the infamous BALCO steroid cases and kicked off a national investigation of corporate stock option fraud. Like Mr. Cummins, Ms. Lam and Mr. Ryan are Republicans appointed to their jobs by President George W. Bush.

Politics and justice are inextricably intertwined. The 93 U.S. attorneys around the country and their staffs prosecute federal crimes, but the U.S. attorneys themselves often are not experienced prosecutors. They usually are chosen for their political connections, swept in or out with every change of administration. Even so, because political corruption is a top priority for their offices, they are supposed to be above politics.

Mr. Cummins, for example, got the task of investigating the Missouri fee office scandal because both of the U.S. attorneys in Missouri at the time had political conflicts.

But with last year's renewal of the U.S.A. Patriot Act, one of the key safeguards against political interference with the U.S. attorneys offices was removed. A new provision allows the attorney general to name replacements for U.S. attorneys when they resign instead of having the president name new ones. This gets around the time-consuming requirement of Senate confirmation, which ostensibly would help in the war on terror.

Instead, it looks like it's being used to get around the war on political corruption.

U.S. Attorney General Alberto Gonzales adamantly denied that last week, but Democratic Sens. Mark Pryor of Arkansas, Dianne Feinstein of California and Patrick Leahy of Vermont want Congress to take a second look at the law that allows appointees to skirt Senate confirmation.

That's an excellent idea. We look forward to hearings on the issue, and trust Mr. Cummins will be asked to testify about the reasons for his dismissal.

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You're fired: Furtive Justice Department boots attorneys

Sacramento Bee
January 22, 2007

Editorial

Since the November elections, the Justice Department has asked an unknown number of U.S. attorneys around the country, including two in California, to resign before the end of their terms. As Sen. Dianne Feinstein, D-Calif., has said, these are forced resignations in districts that have major ongoing cases.

Last week at the Senate Judiciary Committee hearing, Feinstein asked Attorney General Alberto Gonzales how many U.S. attorneys were being fired, but he would not give a number.

One Californian departing is Carol Lam, the U.S. attorney in San Diego who is pursuing corruption related to the prosecution of Rep. Randy "Duke" Cunningham, now in prison, thanks to her. The other is Kevin Ryan, the U.S. attorney in San Francisco who is in the middle of investigating whether 25 companies illegally withheld information about lucrative stock options for top executives.

It is customary that U.S. attorneys are prepared to leave office when a new president is elected. At the beginning of their terms, presidents have the discretion to name the 93 U.S. attorneys, who then must be confirmed by the Senate. They typically serve until the president leaves office. These midterm U.S. attorney firings are unusual, particularly because there are no allegations of misconduct.

Feinstein is alarmed that a little-known, last-minute change to the USA Patriot Act Reauthorization in March 2006 allows the attorney general to replace U.S. attorneys without Senate confirmation. The change was not in the original bills approved by the House and Senate, and thus never got a hearing. At the request of the Justice Department, Sen. Arlen Specter, R-Pa., added the provision during a House-Senate conference committee, which reconciles House and Senate bills for a final vote.

Under the old law, the attorney general could name an interim U.S. attorney for 120 days and when that term expired, the U.S. District Court would name a replacement until a presidential nominee was confirmed by the Senate. Feinstein has introduced a bill to restore the old law.

Presidential appointment with Senate confirmation remains an important check and balance in our system of government. The Senate and the House should approve Feinstein's bill immediately to prevent an unwarranted tilt toward presidential power.

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A CASE OF JUSTICE THAT STINKS

Roanoke Times, The (VA)

January 21, 2007

EDITORIAL

This is a new old story, about one of those "little-noticed" provisions in complex legislation that draws attention only when it starts to stink.

The complex law is the Patriot Act. The smelly provision -- one of many, but a noticeable one of late -- is an innocuous-seeming change in the way the executive branch makes interim appointments of U.S. attorneys.

In effect, the change allows the attorney general to replace federal prosecutors without Senate approval.

The Bush administration seems to be using this new power, in part, to rid the Justice Department of prosecutors deep into political corruption investigations and to put political hacks in their place.

Congress should act quickly to strip the law of a provision so ripe for abuse.

Distressingly, lawmakers passed the change without debate last year when the GOP-dominated Congress approved the USA Patriot Improvement and Reauthorization Act.

The political blog TPMuckraker.com reports that a spokesman for one of the bill's Republican managers, Rep. James Sensenbrenner, said then-Senate Judiciary Chairman Arlen Specter slipped the new language into the bill at the last minute. Separate measures passed earlier in both houses did not include the change.

U.S. attorneys are appointed by the president and approved by the Senate. When appointees leave, voluntarily or not, the attorney general can make an interim appointment that is not subject to a Senate vote.

Formerly, such an appointment could last up to 120 days, after which a local federal district court would name a replacement until the vacancy was filled. Now interim appointments can last indefinitely, at least until the end of a president's term, a process that circumvents the Senate's check on executive power.

That change began stinking after a series of forced resignations that includes the impending departure of Carol Lam, the U.S. attorney for San Diego. Lam focused her office's efforts on successfully prosecuting former Rep. Duke Cunningham for corruption.

The head of the FBI's San Diego office bemoans Lam's ouster, saying it will jeopardize a continuing investigation that has touched several Republican lawmakers. He and several former federal prosecutors say her firing smells of politics.

Not so, Attorney General Alberto Gonzales insists. He testified at a congressional hearing Thursday, assuring Democratic Sens. Dianne Feinstein and Patrick Leahy that U.S. attorneys are never removed to retaliate for or interfere with an investigation or court case.

"Sources" suggest other reasons for Lam's firing, from her pursuit of public corruption and white-collar crime at the expense of drug smuggling and gun cases to a poor track record for convictions. Suspicions that politics underlies all would be hard to prove -- but they are also hard to dismiss.

One of Gonzales' interim appointments, after all, is J. Timothy Griffin, since late December the interim U.S. attorney for the Eastern District of Arkansas. His career up to then was spent largely doing "opposition research" -- digging up dirt on Democrats -- for the Republican Party and, from 2005 to 2006, for Karl Rove.

The Justice Department forced Griffin's predecessor to resign.

Such examples illustrate, at the least, the potential for putrefying politics to corrupt the Justice Department's use of truly awesome powers.

Feinstein and Leahy have filed a bill to restore the district court's authority to make interim appointments. Gonzales' protestations of high principle do not persuade. The senators should press on.

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Dropping like flies: Resignations of U.S. attorneys raise suspicion of politically motivated Justice Department purge.

The Houston Chronicle

0AG000000544

January 25, 2007

Editorial

IN the past year 11 U.S. attorneys have resigned their positions, some under pressure from their Justice Department superiors and the White House, even though they had commendable performance records.

Democratic senators are concerned that the high turnover is linked to an obscure, recently passed provision of the Patriot Act. The provision allows the Bush administration to fill vacancies with interim prosecutors for the remainder of the president's term without submitting them to the Senate for confirmation. Previously, interim appointments were made by a vote of federal judges in the districts served by the outgoing U.S. attorneys.

U.S. Sen. Mark Pryor, D-Ark., contends that in his state U.S. Attorney Bud Cummins was improperly ousted in favor of a protégé of Bush political adviser Karl Rove. Likewise in California, U.S. Attorneys Carol Lam of San Diego and Kevin Ryan of San Francisco were forced from their positions. Sen. Diane Feinstein, D-Calif., alleged that Lam fell out of favor with her Washington bosses for spearheading the bribery prosecution and conviction of Republican Congressman Randy "Duke" Cunningham last year. Lam reportedly had other politicians in her sights.

"I am particularly concerned because of the inference ... that is drawn to manipulation in the lineup of cases to be prosecuted by a U.S. attorney," Feinstein stated. "In the San Diego case, at the very least, we have people from the FBI indicating that Carol Lam has not only been a straight shooter but a very good prosecutor."

U.S. Attorney General Alberto Gonzales denied political motives figured in the multiple resignations of top prosecutors, and pledged that all interim appointments would be submitted to the Senate for confirmation. He reiterated that U.S. attorneys serve at the pleasure of the president and can be removed for a number of reasons, including job performance and their standing in their districts. That isn't good enough for Feinstein and her Democratic colleagues, who have introduced legislation to reinstate the appointment of interim prosecutors by federal judges.

Gonzales is correct that the president is vested with the power to appoint U.S. attorneys. Unfortunately, the Patriot Act change eliminated the ability of the Senate to exercise its constitutional oversight of those nominations to make sure they are qualified and not simply political plums handed out to supporters in the waning years of the administration.

The attorney general's pledge to bring the wave of interim appointees before the Senate for confirmation is welcome, providing it is done in a speedy fashion. Still, the Patriot Act needs to be amended to restore judicial appointment of interims.

No president should be able to fire top government prosecutors from their positions for political reasons and then install successors without a thorough vetting by the constitutionally charged legislative body.

FEINSTEIN LETTER RE USA
CAROL LAM



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 23, 2006

The Honorable Dianne Feinstein
United States Senator
Washington, D.C. 20510

Dear Senator Feinstein:

This is in response to your letter dated June 15, 2006, to the Attorney General regarding the issue of immigration-related prosecutions in the Southern District of California. We apologize for any inconvenience our delay in responding may have caused you.

Attached please find the information you requested regarding the number of criminal immigration prosecutions in the Southern District of California. You also requested intake guidelines for the Southern District of California United States Attorney's Office. The details of any such prosecution or intake guidelines would not be appropriate for public release because the more criminals know of such guidelines, the more they will conform their conduct to avoid prosecution.

Please know that immigration enforcement is critically important to the Department and to the United States Attorney's Office in the Southern District of California. That office is presently committing fully half of its Assistant United States Attorneys to prosecute criminal immigration cases.

The immigration prosecution philosophy of the Southern District focuses on deterrence by directing its resources and efforts against the worst immigration offenders and by bringing felony cases against such defendants that will result in longer sentences. For example, although the number of immigration defendants who received prison sentences of between 1-12 months fell from 896 in 2004 to 338 in 2005, the number of immigration defendants who received sentences between 37-60 months rose from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months rose from 21 to 77.

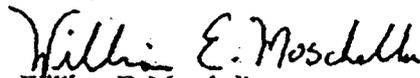
Prosecutions for alien smuggling in the Southern District under 8 U.S.C. sec. 1324 are rising sharply in Fiscal Year 2006. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005.

OAG000000548

The Honorable Dianne Feinstein
Page Two

There are few if any matters that are more deeply felt than the relationship between parent and child, and we understand and fully empathize with the enormity of the loss being felt by Mr. Smith. We very much appreciate your interest in this matter as well. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,


William E. Moschella
Assistant Attorney General

0AG000000549

United States Attorneys -- Criminal Caseload Statistics¹

Southern District of California
Standard Matter and Case Counts
Immigration

Cases & Defendants -- Filed, Pending, & Terminated															
Fiscal Year ²	Cases Filed	Percent Change	Defendants Filed	Percent Change	Average # of Defendants Per Case Filed	Cases Pending	Percent Change	Defendants Pending	Percent Change	Average # of Defendants Per Case Pending	Cases Terminated	Percent Change	Defendants Terminated	Percent Change	Average # of Defendants Per Case Terminated
93	330		357		1.08	217		284		1.31	308		340		1.10
94	272	-17.6%	290	-18.8%	1.07	137	-36.9%	191	-32.7%	1.38	345	12.0%	378	10.6%	1.09
95	851	212.9%	884	204.8%	1.04	155	13.1%	221	15.7%	1.43	829	140.3%	850	126.1%	1.03
96	1,387	60.6%	1,425	61.2%	1.04	237	48.5%	300	35.7%	1.32	1,291	55.7%	1,341	57.8%	1.04
97	1,853	35.6%	1,949	36.8%	1.05	259	14.1%	352	17.3%	1.36	1,819	40.9%	1,892	41.1%	1.04
98	1,918	3.5%	2,093	7.4%	1.09	479	84.9%	628	77.8%	1.31	1,695	-6.8%	1,811	-4.3%	1.07
99	1,864	-13.2%	1,778	-15.1%	1.07	448	-6.5%	566	-9.8%	1.26	1,687	-6.5%	1,857	1.4%	1.09
00	2,116	27.2%	2,223	25.0%	1.05	601	34.2%	710	25.4%	1.18	1,961	16.2%	2,070	12.7%	1.06
01	1,907	-9.8%	1,888	-10.8%	1.04	496	-17.5%	580	-18.3%	1.17	2,006	2.3%	2,112	2.0%	1.05
02	1,921	0.7%	2,059	3.6%	1.07	534	27.8%	781	31.2%	1.20	1,782	-11.2%	1,877	-11.1%	1.05
03	2,463	28.2%	2,558	24.2%	1.04	739	16.6%	818	7.5%	1.11	2,359	32.4%	2,497	33.0%	1.06
04	2,527	2.6%	2,832	2.9%	1.04	816	10.4%	818	12.2%	1.13	2,506	6.2%	2,588	3.8%	1.03
05	1,441	-43.0%	1,514	-42.8%	1.05	645	-21.0%	714	-22.2%	1.11	1,826	-35.1%	1,732	-33.1%	1.07
06	1,432	-0.6%	1,580	4.4%	1.10	672	4.2%	778	8.7%	1.15	1,412	-13.2%	1,482	-13.9%	1.06
Average	1,578	22.1%	1,666	21.8%	1.06	466	13.1%	558	11.4%	1.20	1,545	18.4%	1,630	17.4%	1.05

¹ Caseload data extracted from the United States Attorney's Case Management System.

² FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

0AG000000550

United States Attorneys - Criminal Caseload Statistics¹
 Southern District of California
 Standard Sentencing Courts
 Immigration

Sentencing								
Fiscal Year ²	Defendants In Cases Filed	Defendants In Cases Terminated	Total Defendants Guilty	Number of Guilty Defendants Not Sentenced To Prison	Percent Change	Number of Guilty Defendants Sentenced To Prison	Percent Change	Percent of Guilty Defendants Sentenced To Prison
83	357	340	324	18		306		94.4%
84	290	378	357	22	22.2%	335	8.5%	93.8%
85	884	850	841	50	127.3%	791	136.1%	94.1%
86	1,425	1,341	1,318	100	280.0%	1,128	42.8%	85.6%
87	1,948	1,882	1,852	302	58.9%	1,550	37.4%	83.7%
88	2,093	1,811	1,741	156	-48.3%	1,585	2.3%	91.0%
89	1,778	1,837	1,737	82	-47.4%	1,655	4.4%	95.3%
00	2,223	2,070	1,942	82	-24.4%	1,860	13.6%	96.6%
01	1,988	2,112	1,877	80	28.0%	1,897	0.9%	96.0%
02	2,059	1,877	1,758	74	-7.5%	1,685	-11.2%	95.8%
03	2,558	2,487	2,385	92	24.0%	2,303	38.7%	96.2%
04	2,632	2,568	2,408	36	-60.8%	2,370	2.9%	98.5%
05	1,514	1,732	1,551	49	38.1%	1,502	-36.8%	96.8%
06	1,580	1,492	1,372	40	-18.4%	1,332	-11.0%	97.1%
Average	1,808	1,830	1,541	90	28.5%	1,451	17.5%	93.9%

Sentencing															
Fiscal Year ²	Number of Guilty Defendants Sentenced To Prison	Defendants Sentenced to Prison 1-12 Months	Percent of Defendants Sentenced to Prison 1-12 Months	Defendants Sentenced to Prison 13-24 Months	Percent of Defendants Sentenced to Prison 13-24 Months	Defendants Sentenced to Prison 25-36 Months	Percent of Defendants Sentenced to Prison 25-36 Months	Defendants Sentenced to Prison 37-60 Months	Percent of Defendants Sentenced to Prison 37-60 Months	Defendants Sentenced to Prison 61+ Months	Percent of Defendants Sentenced to Prison 61+ Months	Defendants Sentenced to Life in Prison	Percent of Defendants Sentenced to Life in Prison	Defendants Sentenced to Death	Percent of Defendants Sentenced to Death
83	306	83	20.8%	223	72.9%	10	3.3%	5	1.6%	5	1.6%	0	0.0%	0	0.0%
84	335	41	12.2%	281	83.9%	4	1.2%	4	1.2%	5	1.5%	0	0.0%	0	0.0%
85	791	54	6.8%	704	88.0%	8	0.8%	18	2.0%	11	1.4%	0	0.0%	0	0.0%
86	1,128	146	12.9%	904	80.1%	18	1.4%	45	4.0%	17	1.5%	0	0.0%	0	0.0%
87	1,550	457	29.5%	894	58.1%	28	1.8%	32	2.1%	39	2.5%	0	0.0%	0	0.0%
88	1,585	404	25.5%	718	45.3%	340	21.5%	87	4.2%	56	3.5%	0	0.0%	0	0.0%
89	1,655	374	22.8%	474	28.6%	829	38.0%	100	6.0%	78	4.7%	0	0.0%	0	0.0%
00	1,860	755	40.2%	573	30.5%	496	26.4%	42	2.2%	14	0.7%	0	0.0%	0	0.0%
01	1,897	831	48.1%	580	30.8%	323	17.0%	50	2.6%	13	0.7%	0	0.0%	0	0.0%
02	1,685	747	44.3%	561	33.3%	326	19.3%	38	2.3%	13	0.8%	0	0.0%	0	0.0%
03	2,303	1,035	44.9%	785	34.1%	418	18.2%	52	2.3%	13	0.6%	0	0.0%	0	0.0%
04	2,370	898	37.8%	745	31.4%	592	25.0%	116	4.8%	21	0.9%	0	0.0%	0	0.0%
05	1,502	338	22.5%	512	34.1%	329	21.9%	246	16.4%	77	5.1%	0	0.0%	0	0.0%
06	1,332	384	28.8%	444	33.3%	186	14.0%	276	20.7%	42	3.2%	0	0.0%	0	0.0%
Average	1,451	473	32.8%	607	41.8%	285	18.2%	78	5.4%	29	2.0%	0	0.0%	0	0.0%

¹ Caseload data extracted from the United States Attorneys' Case Management System.

² FY 2006 numbers are straight-line projections based on actual data through the end of March 2006.

0AG00000551

DIANNE FEINSTEIN
CALIFORNIA



COMMITTEE ON APPROPRIATIONS
COMMITTEE ON ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION
SELECT COMMITTEE ON INTELLIGENCE

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

June 15, 2006

Honorable Alberto Gonzales
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

During our meeting last week you asked if I had any concerns regarding the U.S. Attorneys in California. I want to follow up on that point and raise the issue of immigration related prosecutions in Southern California.

It has come to my attention that despite high apprehensions rates by Border Patrol agents along California's border with Mexico, prosecutions by the U.S. Attorney's Office Southern District of California appear to lag behind. A concern voiced by Border Patrol agents is that low prosecution rates have a demoralizing effect on the men and women patrolling our Nation's borders.

It is my understanding that the U.S. Attorney's Office Southern District of California may have some of the most restrictive prosecutorial guidelines nationwide for immigration cases, such that many Border Patrol agents end up not referring their cases. While I appreciate the possibility that this office could be overwhelmed with immigration related cases; I also want to stress the importance of vigorously prosecuting these types of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught. I am concerned that lax prosecution can endanger the lives of Border Patrol agents, particularly if highly organized and violent smugglers move their operations to the area.

Therefore, I would appreciate responses to the following issues:

- Please provide me with an update, over a 5 year period of time, on the numbers of immigration related cases accepted and prosecuted by the

0AG000000552

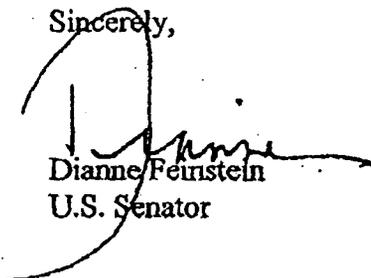
U.S. Attorney Southern District of California, particularly convictions under sections 1324 (alien smuggling), 1325 (improper entry by an alien), and 1326 (illegal re-entry after deportation) of the U.S. Code.

- What are your guidelines for the U.S. Attorney's Office Southern District of California? How do these guidelines differ from other border sectors nationwide?

By way of example, based on numbers provided to my office by the Bureau of Customs and Border Protection and the U.S. Sentencing Commission, in FY05 Border Patrol agents apprehended 182,908 aliens along the border between the U.S. and Mexico. Yet in 2005, the U.S. Attorney's office in Southern California convicted only 387 aliens for alien smuggling and 262 aliens for illegal re-entry after deportation. When looking at the rates of conviction from 2003 to 2005, the numbers of convictions fall by nearly half.

So I am concerned about these low numbers and I would like to know what steps can be taken to ensure that immigration violators are vigorously prosecuted. I appreciate your timely address of this issue and I look forward to working with you to ensure that our immigration laws are fully implemented and enforced.

Sincerely,



Dianne Feinstein
U.S. Senator

BELL/MEADOR IN JOURNAL
OF LAW AND POLITICS

0AG00000554

FROM VOLUME 9 of THE JOURNAL OF LAW AND POLITICS, beginning at page 247 (1992-1993)
By Former Attorney General Griffin Bell and Daniel J. Meador, Assistant Attorney General
in the Carter Administration

The major concern of the Attorney General in relation to U.S. Attorneys is to see to it that the government is represented effectively in every district by competent attorneys of integrity who are responsive to policies formulated by the Attorney General. The best way to achieve this is for the Attorney General to be able to select such persons and to have them serve only as long as they perform effectively and carry out those policies.

Reasonable minds, all equally dedicated to improving the process, can differ as to what method would produce the best results. In our view, placing the appointing power in the President alone or in the Attorney General alone would probably be an improvement over the present process. All things considered, however, we believe that the method most likely to produce the best results in the long run is to place the power of appointment and removal of U.S. Attorneys solely in the Attorney General. This method seems more promising than any other to assure high quality in the appointees, to minimize the stigma of political patronage surrounding these appointments, and to foster effective departmental management.

This conclusion rests on the legal and practical realities of the situation. ... the Attorney General discharges a large part of that responsibility ["take care that the laws be executed faithfully"] through the ninety-four U.S. Attorneys throughout the country. They must be persons in whom the Attorney General has complete confidence and who in turn are responsible to the Attorney General alone. U.S. Attorneys are major arms of the executive branch, and they should be entirely accountable to the constitutionally and statorily ordained superior executive officers. Giving the Attorney General the power to hire and fire these subordinates provides the best guarantee of consistent and effective administration and enforcement of federal laws.

OAG00000555

Goodling, Monica

From: Chiara, Margaret M. (USAMIW)
Sent: Friday, November 04, 2005 11:01 PM
To: MGoodling@usa.doj.gov
Subject: Greetings from WDMI

Attachments: tmp.htm



tmp.htm (753 B)

I understand that you have transitioned from EOUSA to the Office of the Attorney General. Know that I enjoyed working with you on the implementation of the AG Guidelines. I hope that you will be able to see the project through to completion. Best wishes on your new assignment.
MMC

Goodling, Monica

From: Scolinos, Tasia
Sent: Friday, April 14, 2006 1:09 PM
To: Goodling, Monica
Subject: FW: DOJ evaluators rap SF U.S. Attorney's management

Attachments: tmp.htm



tmp.htm (10 KB)

FYI - thought since others were included on this email chain you should see it too

-----Original Message-----

From: Talamona, Gina
Sent: Friday, April 14, 2006 12:13 PM
To: Smith, Kimberly A; Scolinos, Tasia; Roehrkasse, Brian; Sierra, Bryan
Subject: FW: DOJ evaluators rap SF U.S. Attorney's management

FYI...

-----Original Message-----

From: Barnes, Christopher (USAOHS) EARS
Sent: Friday, April 14, 2006 10:00 AM
To: Talamona, Gina; Margolis, David; Battle, Michael (USAE0); Kelly, John (USAE0); Edwards, William (USAOHN); Anderson, Jeff (USAWIW); Tait, David (USAE0)
Subject: FW: DOJ evaluators rap SF U.S. Attorney's management

FYI Chris

>
> **From:** Colthurst, Tom (USATNW)
> **Sent:** Thursday, April 13, 2006 8:07 AM
> **To:** Barnes, Christopher (USAOHS) EARS
> **Subject:** DOJ evaluators rap SF U.S. Attorney's management

>
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> The Recorder
>
> April 7, 2006 Friday

> SECTION: NEWS; Pg. 1 Vol. 130 No. 68

> LENGTH: 597 words

> HEADLINE: DOJ evaluators rap Ryan's management;
> NEWS

> BYLINE: Justin Scheck

> BODY:

> It was a just a matter of time before the longstanding complaints
> about U.S.
> Attorney Kevin Ryan's management style made their way to Washington.

> That was the takeaway from a presentation last Friday by Justice
> Department
> evaluators to managers in Ryan's office.

>
> The reviewers spent last week auditing the office.
>
> In presenting their criticisms, they said Ryan was inaccessible to
> his
> subordinates and has a detached management style that engenders low
> morale among
> assistant prosecutors, said sources with direct knowledge of the
> meeting.
>
> Such reviews are performed every three years on each federal
> prosecutor's
> office by the Executive Office of the U.S. Attorney.
>
> The process is known as EARS because it's administered by the
> executive
> office's Evaluation and Review Staff.
>
> Once an EARS review is concluded, evaluators are required to
> verbally present
> their negative findings to managers before preparing a written report.
>
> It was at that verbal presentation that the EARS team read off a
> list of
> relatively minor administrative complaints -- recommending, for
> example, that
> certain open jobs be filled -- in addition to harsh criticisms of the
> U.S.
> attorney that surprised everyone in the room, Ryan included, said
> sources
> familiar with the meeting.
>
> The reviewers did preface the critique by saying that positive
> aspects of
> office performance would be outlined in the final EARS report, said
> sources
> familiar with the meeting, in addition to a Ryan spokesman.
>
> The presentation echoed criticisms that have been leveled against
> Ryan and
> top deputy Eumi Choi over the past few years by disgruntled assistant
> prosecutors.
>
> The reviewers said Ryan is perceived as unapproachable, has little
> interaction with subordinates, and that a lack of confidence among his
> employees
> in his oversight of the office has resulted in continuing low morale
> in the
> criminal division, sources said.
>
> They recommended several management changes, including that Ryan
> grant more
> open access to assistants, and that one of Choi's two job titles --
> criminal
> division chief and first assistant -- be delegated to another
> attorney.
>
> The reviewers did not criticize the office's handling of individual
> cases, or
> the number of cases it has brought.
>
> In a Thursday e-mail, Ryan said he would take the EARS suggestions
> into
> account.
>
> "Given the size of this office and its three branches in San
> Francisco, San

> Jose and Oakland, and other competing work demands, I do not always
> get the
> chance to interact with our prosecutors and staff as much as I would
> like," he
> wrote.

> "However, as with any other matter, I am open to suggestions for
> improvement."

> Ryan further noted that the evaluation team "acknowledged many
> positive
> accomplishments by the office.

> "The evaluation process is not complete since the final report has
> yet to be
> written. We look forward to the full report, but until we receive it,
> it is
> premature to discuss whether any specific changes would be adopted."

> Rory Little, a professor at Hastings College of the Law -- and a
> former
> prosecutor who often represents lawyers in the San Francisco U.S.
> attorney's
> office -- said he expects Ryan to take the criticisms seriously.

> "It's not good news," said Little, who is generally supportive of
> Ryan and
> Choi.

> Little said that while he's generally confident in the EARS
> process, he
> wonders if Justice Department critics in D.C. who objected to Ryan's
> appointment
> are influencing the findings.

> "It's hard to say whether it's substantively legitimate or if there
> are
> people in Washington who don't like Kevin Ryan," he said.

> Reporter Justin Scheck's e-mail address is jscheck@alm.com.

> LOAD-DATE: April 10, 2006

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, May 09, 2006 5:49 PM
To: Sampson, Kyle
Subject: RE: AGAC

David Dugas has the Environment Working Group officially (Judy Beeman sent him a letter per your instructions). Judy also says Chiara is calling herself the chair of the NAIS, but Judy is checking her email to see who authorized it or how that happened. Perhaps she just assumed it was hers after Tom left...

-----Original Message-----

From: Sampson, Kyle
Sent: Tuesday, May 09, 2006 2:18 PM
To: Goodling, Monica
Subject: FW: AGAC

I think the answer to Bill's below questions is no -- 99 percent sure. Could you confirm for me?

-----Original Message-----

From: Mercer, Bill (ODAG)
Sent: Tuesday, May 09, 2006 12:20 AM
To: Sampson, Kyle
Subject: AGAC

1. Have you filled the NAIS chairmanship? Chiara was Tom's vice, but she has limitations.
2. Have you filled the Environment Working Group chairmanship formerly held by Burgess?

Sent from my BlackBerry Wireless Handheld

Tracking:

Recipient
Sampson, Kyle

Read
Read: 5/9/2006 6:23 PM

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, May 09, 2006 6:25 PM
To: Sampson, Kyle
Subject: RE: AGAC

Will do.

-----Original Message-----

From: Sampson, Kyle
Sent: Tuesday, May 09, 2006 6:24 PM
To: Goodling, Monica
Subject: RE: AGAC

Hmmm. I have no recollection of designating Dugas. Zero. Could you ask Judy to check the authorization for this also? Thx.

-----Original Message-----

From: Goodling, Monica
Sent: Tuesday, May 09, 2006 5:49 PM
To: Sampson, Kyle
Subject: RE: AGAC

David Dugas has the Environment Working Group officially (Judy Beeman sent him a letter per your instructions). Judy also says Chiara is calling herself the chair of the NAIS, but Judy is checking her email to see who authorized it or how that happened. Perhaps she just assumed it was hers after Tom left...

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Subject: AGAC

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2. Have you filled the Environment Working Group chairmanship formerly held by Burgess?

Sent from my BlackBerry Wireless Handheld

Tracking:	Recipient	Read
	Sampson, Kyle	Deleted: 5/9/2006 7:36 PM

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, May 09, 2006 7:48 PM
To: Beeman, Judy (USAEO)
Subject: RE: NAIS Listing

Please call me about this tomorrow. Thanks.

-----Original Message-----

From: Beeman, Judy (USAEO)
Sent: Tuesday, May 09, 2006 6:34 PM
To: Goodling, Monica
Subject: FW: NAIS Listing

FYI.

>
> From: Wichtman, Karrie S. (USAMIW)
> Sent: Thursday, March 23, 2006 9:46 AM
> To: Beeman, Judy (USAEO)
> Cc: Hagen, Leslie A. (USAEO); Chiara, Margaret M. (USAMIW)
> Subject: RE: NAIS Listing

> Good Morning Judy,

>
> Thank you for the information. Yes, Margaret is the new chair. She
> is in the process of organizing members into work groups to address
> NAIS priority areas. During this process we have discovered that USA
> Chuck Larson has withdrawn as a member. Additionally, Margaret is
> extending an invitation to new USAs with a substantial Indian Country
> population in their districts. We hope to have an updated list to you
> by the end of March.

>
> Karrie S. Wichtman
> Assistant to the United States Attorney
> and First Assistant United States Attorney
> Western District of Michigan
> Phone: 616-456-2404
> Fax: 616-456-2890

>
> From: Beeman, Judy (USAEO)
> Sent: Wednesday, March 22, 2006 4:46 PM
> To: Chiara, Margaret M. (USAMIW); Wichtman, Karrie S. (USAMIW)
> Subject: NAIS Listing

> Margaret if you are the new chair, please let me know. Thanks. Judy

>
> Native American Issues
> Chair: TBA
> Vice Chair: Margaret Chiara (W/MI)
> Sheldon Sperling (E/OK)
> David O'Meilia (N/OK)
> Paul Charlton (AZ)
> James A. McDevitt (E/WA)
> Thomas E. Moss (ID)
> David Iglesias (NM)
> Michael G. Heavican (NE)
> Matt Mead (WY)
> Bill Mercer (MT)
> Daniel Bogden (NV)
> Drew Wrigley (ND)

- > Dunn Lampton (S/MS)
- > McGregor W. Scott (E/CA)
- > Glen Suddaby (N/NY)
- > Karin Immergut (OR)
- > Kevin O'Connor (CT)
- > Gretchen Shappert (W/NC)
- > Donald W. Washington (W/LA)
- > Chuck Larson (N/IA)
- > Deborah Rhodes (S/AL)
- > John Richter (W/OK)
- > Michelle G. Tapken (SD)
- > Leslie Hagen (W/MI) (EOUSA Staff Liaison)
- >
- >
- >

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WASHINGTON OFFICE:
211 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3906
FAX: (202) 225-3303

DISTRICT OFFICE:
1800 TIMWOOD ROAD, SUITE 310
VISTA, CA 92081
(760) 589-6000
FAX: (760) 589-1176
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IMMIGRATION, BORDER SECURITY & CLAIMS
HOUSE POLICY COMMITTEE

May 24, 2006

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

In response to your comments on the Border Patrol internal memo my office obtained and released, your statement misses the mark and exhibits a willful disregard to the documented 251 incidents in fiscal year 2004 where the Border Patrol at the El Cajon station apprehended smugglers but led to smuggling charges for roughly 6% of the cases. The memo I released contains a specific enforcement number for each of the 251 incidents that you or the Department of Homeland Security can confirm by simply typing the number into a computer database.

Your failure to address the substantive issues raised in the memo is consistent with previous news reports and comments that I have repeatedly heard from Border Patrol agents who work closely with your office. You have previously disregarded my requests for information that can help me understand the extent of the problems associated with prosecuting alien smuggling cases and the resources you would need to adopt a zero tolerance policy for trafficking in human beings.

In the case of the memo I released, the fact that you have chosen to focus on unspecified alterations to what you freely admit is an "old Border Patrol document" and your assertion that this document was not seen or approved by Border Patrol management does not dismiss the verifiable facts and details in the memo. I can readily understand that the internal memo, written by a Border Patrol employee, is an embarrassment to your office as the memo speaks with such candor about barriers to prosecution that it could not be embraced and released publicly as a report representing the views of Border Patrol management.

On Monday, my office requested your assistance in obtaining a copy of the report you referenced in your statement but your office has not returned that phone call. I find your statement that "all dialogue and debate should be based on well-informed and accurate data" incredibly disingenuous considering your record in response to my past requests for information on criminal aliens and alien smuggling.

The last correspondence I sent to you was October 13, 2005, concerning an alien by the name of Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JA5. In this letter I asked that if there is some barrier to the prosecution of criminal aliens, including smugglers, that I am unaware of, to please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Finally, as the representative of a Congressional district that is greatly impacted by border crimes and as a Member of Congress who sits on the Judiciary Committee, the Intelligence Committee, and the Government Reform Committee that collectively have oversight responsibilities for the Department of Justice and the Department of Homeland Security, your lack of cooperation is hindering the ability of Congress to provide proper oversight over your office and to make informed policy decisions. I am asked to craft and vote on legislative policies that determine your legal authority and the resources you receive and having full and correct information on an issue like the challenges of stopping alien smugglers is essential.

I request a joint meeting with you and the Chief Patrol Agent of the San Diego Border Sector to discuss the prosecution of alien smugglers and what resources are needed to establish a zero tolerance policy for prosecuting individuals who traffic in human beings. My office will contact your office to try and arrange a meeting time.

Sincerely yours,



Darrell Issa
Member of Congress

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, May 30, 2006 8:05 PM
To: Beeman, Judy (USAEO)
Subject: RE: Margaret chiara

Can Johnny handle when he calls to say that they don't have any money for a subcomm mtg by just mentioning that he knows the AG is thinking about who to appoint, but that he knows she's on the list? Then you can send out your memo. Thanks.

-----Original Message-----

From: Beeman, Judy (USAEO)
Sent: Thursday, May 25, 2006 11:16 AM
To: Goodling, Monica
Subject: Margaret chiara

Monica, I am sending out the agac summary memo in the next couple of days. Since Margaret made a presentation, I need to include her title. I could go ahead and put in the memo, Acting Chair, NAIS. If I do this I suspect she may call me. What I could say if she calls is that "technically she is really acting chair until the AG makes official appointment of a new chair."

This might solve our problems without confronting it head on???? Your thoughts.

Goodling, Monica

From: Goodling, Monica
Sent: Friday, June 09, 2006 4:56 PM
To: Cummins, Bud (USAARE)
Subject: RE: Resumes needed

You too! Thanks.

-----Original Message-----

From: Cummins, Bud (USAARE)
Sent: Friday, June 09, 2006 3:50 PM
To: Goodling, Monica
Subject: RE: Resumes needed

Just to let you know, I have not ignored this. I invited a select few of our real racehorses to consider it. I doubt I will have any takers due mainly to their domestic situations with kids, etc., but some are still thinking I think. I will let you know if I come up with someone, but I didn't want you to think I ignored the email. Have a good weekend. Bud

From: Goodling, Monica
Sent: Monday, June 05, 2006 5:42 PM
To: Goodling, Monica
Subject: Resumes needed

I'm sending this email to a smaller group of United States Attorneys, with the hope that you can provide assistance. In my new hat as the White House Liaison for the Justice Department, I am in the search of AUSAs (or former AUSAs) who would be good fits for leadership positions or the leadership offices here in D.C. In past years, Main Justice has had some fantastic talent come from the USAOs. This has benefited the field by helping ensure that the policy decisions made here reflect real life experience in the USAOs -- and also opened the door to some fantastic opportunities for some of these individuals. I am now trying to identify a group of people we could talk to about upcoming appointee positions. I know that no one likes to give up their "best and brightest," but I'm hopeful that you can help me identify some people who would be enthusiastic about joining the team here in D.C. Consider it your chance to potentially help recognize/reward the AUSA who is incredibly loyal, recognizes the Department's priorities, puts in long hours to carry them out and does a great job, but who isn't the self-promoter type.

I'm happy to do the legwork, and to reach out to the people you identify and chat, if you just want to give me some names. Please give me a call if you have questions about what I'm looking for. Hope all's well.

Best, Monica

Monica M. Goodling
White House Liaison & Senior Counsel to the Attorney General
Department of Justice
950 Pennsylvania Ave N.W.
Washington, D.C. 20530
202.353.4435 (phone)
202.305.9687 (fax)

"[W]e rededicate ourselves to the ideals that inspired our founders. During that hot summer in Philadelphia more than 200 years ago, from our desperate fight for independence to the darkest days of a civil war, to the hard-fought battles of the 20th century, there were many chances to lose our heart, our nerve, or our way. But Americans have always held firm, because we have always believed in certain truths: We know that the freedom we defend is meant for all men and women, and for all times. And we know that when the work is hard, the proper response is not retreat; it is courage." - President George W. Bush, July 4, 2005

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, June 13, 2006 7:06 PM
To: Voris, Natalie (USAEO); Courtwright_S@who.eop.gov
Subject: RE: Pre-Nom ED/AR

Natalie gets all the credit.

-----Original Message-----

From: Voris, Natalie (USAEO)
Sent: Tuesday, June 13, 2006 6:59 PM
To: Courtwright_S@who.eop.gov
Cc: Goodling, Monica
Subject: RE: Pre-Nom ED/AR

Susan:

As requested, attached is the pre-nomination paperwork for John Timothy Griffin (ED/AR). At your direction, I have not included the WH Form ("snp" document). I do not have a photo for Mr. Griffin. Please let me know if you need anything else. I have included a past WH Questionnaire to provide you with additional information about Mr. Griffin.

Thank you,

Natalie

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, June 13, 2006 7:06 PM
To: Sampson, Kyle
Subject: EDAR

Susan has the pre-nomination paperwork she needs. I'll talk to Mike Battle in the a.m. about calling Cummins and will make sure ODAG knows that we are now executing this plan (I did tell them this was likely coming several months ago).

Let me know if there is anything else you need while you're gone - have a great trip.

Tracking:

Recipient

Read

Sampson, Kyle

Read: 6/13/2006 7:08 PM

Goodling, Monica

From: Goodling, Monica
Sent: Thursday, June 15, 2006 12:43 PM
To: Beeman, Judy (USAEO)
Subject: RE: FYI, Sutton talked to Chiara; all set

Thanks

-----Original Message-----

From: Beeman, Judy (USAEO)
Sent: Thursday, June 15, 2006 12:22 PM
To: Goodling, Monica
Subject: FYI, Sutton talked to Chiara; all set

On this. She knows she is acting. Thanks. Judy

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, June 20, 2006 11:30 AM
To: 'SJennings@gwb43.com'
Subject: RE: USATTY meeting

Sure -- I'm happy to do it if it involves sensitive issues. If it's more generic resources type of conversation, our EOUSA Director is here this week and available. Just let me know.

-----Original Message-----

From: SJennings@gwb43.com [mailto: SJennings@gwb43.com]
Sent: Tuesday, June 20, 2006 10:16 AM
To: Goodling, Monica
Subject: USATTY meeting

I have a person from New Mexico coming to town this week - he is the President's nominee for the US Postal Board of Governors. He was heavily involved in the President's campaign's legal team.

His name is Mickey Barnett, and he has requested a meeting with someone at DOJ to discuss the USATTY situation there.

Would someone in EOUSA or you or Kyle be available?

J. Scott Jennings

Special Assistant to the President and

Deputy Political Director

The White House

Washington D.C. 20502

sjennings@gwb43.com

Office: 202-456-5275



CONFIDENTIAL

PERSONNEL REVIEW

MONICA M. GOODLING
July 3, 2006

OAG00000573

KEY DEPARTMENT OF JUSTICE POSITIONS

Assistant Attorney General for Administration..... 1

Assistant Attorney General for the Civil Division..... 2

Assistant Attorney General for Legislative Affairs..... 3

Director, ATF (still looking)..... 4

U.S. Attorney, Washington, D.C. 5

U.S. Attorney, San Diego (interim)..... 6

Special Counsel, CRT..... 7

PADAG, Office of the Deputy Attorney General..... 8

COS, Office of the Deputy Attorney General 9

ADAG, Office of the Deputy Attorney General : 10

PDAAG, Office of the Associate Attorney General (terrorism/litigation focus).. 11

DAAG, Office of the Associate Attorney General (general litigation focus)..... 12

DAAG, Office of the Associate Attorney General (OJP focus)..... 13

Director of Advance, OAG..... 14

Counsel, OAG..... 15

U.S. Marshal, Virgin Islands..... 16

Special Assistant, OAG..... 17

Puerto Rico

Goodling, Monica

From: Goodling, Monica
Sent: Wednesday, July 05, 2006 8:42 AM
To: 'john.t.griffin@us.army.mil'
Subject: Re: RE: RE: Hey

WH belatedly told us they hadn't finished checking a few boxes (Senate consultations), so we're holding. Just sit tight - we'll be back with you. WHCO also asked me to remind you to continue to keep this close hold. Thanks.

-----Original Message-----

From: john.t.griffin@us.army.mil
To: Goodling, Monica
Sent: Wed Jul 05 08:24:33 2006
Subject: Re: RE: RE: Hey

hey, i never heard from Natalie or Debbie. is everything cool?

----- Original Message -----

From: "Monica.Goodling@usdoj.gov" <Monica.Goodling@usdoj.gov>
Date: Thursday, June 29, 2006 2:21 am
Subject: RE: RE: Hey

> Thank you.

>

> -----Original Message-----

> **From:** john.t.griffin@us.army.mil
> [mailto:john.t.griffin@us.army.mil]
> **Sent:** Wednesday, June 28, 2006 1:23 AM
> **To:** Goodling, Monica; Voris, Natalie (USAE0); Hardos, Debbie (USAE0)
> **Subject:** Fwd: RE: Hey

>

> Please see the attached email from the head of the security at the
> White House to me regarding my background investigation. It was a
> full FBI field investigation, and it was just completed last
> month. Thank you, Tim Griffin

>

Goodling, Monica

From: Goodling, Monica
Sent: Wednesday, July 05, 2006 9:02 AM
To: 'john.t.griffin@us.army.mil'
Subject: Re: RE: RE: Hey

They consult with the Senators, whether R or D, before we initiate a background. This is standard - normally the WH waits until that's finished until they tell us to send the paperwork - in this case, they called us a little too soon and then called back and told us they weren't quite ready for us to move.

WHCO asked that you not contact anyone in the Senators' office - they like to handle the process themselves, but I will let them know that you have good friends there if they need help.

Hopefully, we'll be back with you very soon! They are on recess this week, though.

Best, Monica

-----Original Message-----

From: john.t.griffin@us.army.mil
To: Goodling, Monica
Sent: Wed Jul 05 08:47:52 2006
Subject: Re: RE: RE: Hey

roger. no problem at all.

i didnt know they asked my Senators before they started the background? i thought they only did that after my name was sent up. (both of mine are Dems.)

i am good friends with both Chiefs of Staff to Pryor and Lincoln. Pryor's chief of staff is a good friend and Lincoln's was my high school girlfriend. should i say anything to them? i would hate for my senators to be told without my peeps knowing?

i havent said a thing to Bud Cummins.

hope yall are well. thanks TG

----- Original Message -----

From: "Monica.Goodling@usdoj.gov" <Monica.Goodling@usdoj.gov>
Date: Wednesday, July 5, 2006 4:40 pm
Subject: Re: RE: RE: Hey

> WH belatedly told us they hadn't finished checking a few boxes
> (Senate consultations), so we're holding. Just sit tight - we'll
> be back with you. WHCO also asked me to remind you to continue to
> keep this close hold. Thanks.

>

>

>

>

>

> -----Original Message-----

> From: john.t.griffin@us.army.mil
> To: Goodling, Monica
> Sent: Wed Jul 05 08:24:33 2006
> Subject: Re: RE: RE: Hey

>

> hey, i never heard from Natalie or Debbie. is everything cool?

>

> ----- Original Message -----

> From: "Monica.Goodling@usdoj.gov" <Monica.Goodling@usdoj.gov>

> Date: Thursday, June 29, 2006 2:21 am

> Subject: RE: RE: Hey

>

> > Thank you.

> >

> > -----Original Message-----

> > From: john.t.griffin@us.army.mil

> > [mailto:john.t.griffin@us.army.mil]

> > Sent: Wednesday, June 28, 2006 1:23 AM

> > To: Goodling, Monica; Voris, Natalie (USAE0); Hardos, Debbie (USAE0)

> > Subject: Fwd: RE: Hey

> >

> > Please see the attached email from the head of the security at

> > the

> > White House to me regarding my background investigation. It was

> > a

> > full FBI field investigation, and it was just completed last

> > month. Thank you, Tim Griffin

> >

>

Goodling, Monica

From: Goodling, Monica
Sent: Wednesday, July 05, 2006 9:19 AM
To: 'john.t.griffin@us.army.mil'
Subject: RE: RE: RE: Hey

WHCO run the process -- Richard and I just talked and he'll reach out to you if they would like your assistance. He's the best person to contact if you have questions at this stage. Best, Monica

-----Original Message-----

From: john.t.griffin@us.army.mil [mailto:john.t.griffin@us.army.mil]
Sent: Wednesday, July 05, 2006 9:07 AM
To: Goodling, Monica
Subject: Re: RE: RE: Hey

ok. thanks. i know they like to handle it themselves, but both chiefs of staff are my very good friends. my wife and i have dined with both. it could potentially be a mistake if they were not the first people in each office to hear my name and learn of movement on my front. that could be critical. i told Richard of those contacts. would leg affairs or the counsel's office handle the initial contact with the senators' offices? thanks, TG

----- Original Message -----

From: "Monica.Goodling@usdoj.gov" <Monica.Goodling@usdoj.gov>
Date: Wednesday, July 5, 2006 5:00 pm
Subject: Re: RE: RE: Hey

> They consult with the Senators, whether R or D, before we initiate
> a background. This is standard - normally the WH waits until
> that's finished until they tell us to send the paperwork - in this
> case, they called us a little too soon and then called back and
> told us they weren't quite ready for us to move.
>
> WHCO asked that you not contact anyone in the Senators' office -
> they like to handle the process themselves, but I will let them
> know that you have good friends there if they need help.
>
> Hopefully, we'll be back with you very soon! They are on recess
> this week, though.
>
> Best, Monica

> -----Original Message-----

> **From:** john.t.griffin@us.army.mil
> **To:** Goodling, Monica
> **Sent:** Wed Jul 05 08:47:52 2006
> **Subject:** Re: RE: RE: Hey

> roger. no problem at all.

>
> i didnt know they asked my Senators before they started the
> background? i thought they only did that after my name was sent
> up. (both of mine are Dems.)
>
> i am good friends with both Chiefs of Staff to Pryor and Lincoln.
> Pryor's chief of staff is a good friend and Lincoln's was my high
> school girlfriend. should i say anything to them? i would hate
> for my senators to be told without my peeps knowing?
>
> i havent said a thing to Bud Cummins.

Goodling, Monica

From: Voris, Natalie (USAEO)
Sent: Wednesday, August 02, 2006 6:59 PM
To: Elston, Michael (ODAG); Goodling, Monica
Subject: FW: Lam is meeting with Issa and Sensenbrenner

FYI

-----Original Message-----

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 6:56 PM
To: Epley, Mark D; Otis, Lee L; Bounds, Ryan W (OLP); Mullane, Hugh;
Voris, Natalie (USAEO)
Cc: Scott-Finan, Nancy; Roland, Sarah E
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Sounds like she handled well and it was actually constructive. See below.

-----Original Message-----

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 6:50 PM
To: Seidel, Rebecca
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Sorry, meant to email you earlier but other events overtook me.

It was fine (at least I think it was). The tone was civil and at times even friendly. I was accompanied by my appellate chief Roger Haines and our Intake supervisor Steve Peak. Issa and Sensenbrenner had about 4 staffers there total. Chrm Sensenbrenner had a single theme he kept coming back to, which is that we aren't doing enough coyote prosecutions and that they are the key to controlling the border. (This is obviously the Border Patrol complaint that was channelled through Issa to Sensenbrenner). I noted that the first 3 times we prosecute a coyote, we get sentences of 60 days, 6 months, and maybe a year, respectively, if we are lucky; whereas the same attorney resources can be used to prosecute criminal aliens with priors for rape, murder and child molestations and we can get sentences of 7-8 years. We have more of the latter type of case than we can handle, so essentially I must make a choice -- prosecute the coyotes who are smuggling but not endangering anyone, or the rapists and murderers who are coming back to rape and murder again.

He noted that among the Southwest Border USAOs, our felony immigration filings are low. I explained that we set out a couple of years ago to deliberately seek higher sentences for the worst offenders; this meant more cases would go to trial, but we would hold the line and not sell the cases for less time. The statistics show that we have, in fact, achieved significantly higher average sentences in our immigration cases; the cost was that our immigration trial rate more than DOUBLED (from 42 trials in 2004 to 89 trials in 2005) and we had to reduce the number of low-end coyote cases we filed. Cong Issa seemed to grasp this concept quickly; he commented that it is too bad we don't have statistics that reflect the matrix of felony immigration filings against lengths of sentences.

We urged them to fully fund the President's budget; thanked Chrm Sensenbrenner for the enforcement provisions in his immigration bill; and some observations were exchanged about the difficulties of prosecuting cases in the 9th Circuit. Congressman Issa asked me how the 4 additional SW border AUSA positions (announced by the AG on Monday) would help me; I said that they would allow me to fill attorney

vacancies that I have had to leave vacant because of the budget situation. Issa noted to Sensenbrenner that he doesn't understand why their prior appropriations don't seem to be "trickling down" to the USAOs, and I interjected that the unfunded COLAs and government-wide rescissions were erasing what appeared to be additional appropriations.

That was about it. We left on very cordial terms without any request for follow-up information. Let me know if you need any additional information, and thanks for preparing me.

Carol

-----Original Message-----

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 3:16 PM
To: Lam, Carol (USACAS)
Cc: Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

How did the Issa/Sensenbrenner meeting go?

-----Original Message-----

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 11:53 AM
To: Seidel, Rebecca; Parent, Steve (USAEO); Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Jordan, Wyevetra G; Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Steve; this helps. -- Carol

-----Original Message-----

From: Parent, Steve (USAEO)
Sent: Wednesday, August 02, 2006 5:24 AM
To: Lam, Carol (USACAS); Seidel, Rebecca; Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Epley, Mark D; Jordan, Wyevetra G
Subject: Re: Lam is meeting with Issa and Sensenbrenner

The 29 percent figure is actual funded position increase from FY 2000 to present.

-----Original Message-----

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>; Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Cc: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Tue Aug 01 22:12:05 2006
Subject: Re: Lam is meeting with Issa and Sensenbrenner

I assume nobody is taking credit for the 29% figure, and I'm on my own?

-----Original Message-----

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Lam, Carol (USACAS) <CLam@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Cc: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Mon Jul 31 18:01:45 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Also adding Mark Epley and Wyvetra Jordan . Mark, Wye - where did the 29% increase number come from? (this is re the press release on the supplemental approps funding AUSAs)

-----Original Message-----

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 8:17 PM
To: Seidel, Rebecca; Lam, Carol (USACAS); Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Re: Lam is meeting with Issa and Sensenbrenner

This is definitely a question for rmp - I have added lisa and steve to the email.

-----Original Message-----

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>; Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
Sent: Mon Jul 31 20:09:54 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Natalie. I do have one other concern -- the DOJ press release sent out today says that the "the number of AUSAs in the Southwest border districts has increased 29 percent since 2000, to a total of 561." I'm not sure where the 29% figure came from; my own FTE increased from 119 to 125 during the last 4 years; I think the percentage increase has been similar in the other districts. Can anyone tell me how the 29% increase was calculated, in case the Congressmen use this figure in our discussion?

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 4:08 PM
To: Lam, Carol (USACAS)
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Carol,
Lisa Bevels is traveling to the Budget Officers training at the NAC this week, but she gives you the best times for a conversation with her below. I clarified with Lisa that it's human trafficking approps Issa is interested in, not prosecutions. Lisa said that she was unaware of any specific human trafficking funds ever going to USAOs.

Please let me know if you need anything else. I'm not the budget expert, but I can try to point you in the right direction.

nv

From: Bevels, Lisa (USAEO)
Sent: Monday, July 31, 2006 6:16 PM
To: Voris, Natalie (USAEO); Parent, Steve (USAEO)
Subject: RE: Lam is meeting with Issa and Sensenbrenner

I will be giving a speech at the BO Conference on Wednesday. If she wants, she can email me and set up a time to talk tomorrow or Wednesday last morning or all afternoon. Civil Rights tracks the Human Trafficking case data for the Department. I'm not sure if Barbara Tone can come up with these cases through our system--they are probably part of immigration or some could even be in child abuse (women and children trafficking for sexual exploitation). Dave Smith asked us a few weeks ago about Human Trafficking and we did not have the data.

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 6:02 PM
To: Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Lam is meeting with Issa and Sensenbrenner

On Wednesday at 11 a.m. PST. OLA has approved this meeting. Carol knows that Issa is curious about what happened to human trafficking funds that Issa believes were provided to USAOs a year ago. Do we have any info on that? Lisa - Carol will probably give you a call in the next day to go over a few things prior to the meeting.

Thanks,
nv

Goodling, Monica

From: Goodling, Monica
Sent: Tuesday, August 08, 2006 1:27 PM
To: 'john.t.griffin@us.army.mil'
Subject: RE: Candidate Package

Howdy -- Next week is fine. Just so you know, we promised Bud Cummins that we would give him a heads up once you return the completed forms to us, before we pass them on to the FBI to initiate the BI. That way, he can make sure he's told everyone he needs to before the FBI starts talking to folks. As far as I know, he's still looking so the extra week benefits him. See you soon.

-----Original Message-----

From: john.t.griffin@us.army.mil [mailto:john.t.griffin@us.army.mil]
Sent: Tuesday, August 08, 2006 1:18 PM
To: Hardos, Debbie (USAEO)
Cc: Goodling, Monica; griffinjag@earthlink.net; Voris, Natalie (USAEO)
Subject: Re: Candidate Package

Great. Thank you very much. Confidentially, I will return to the United States next week and will begin completing it then if that is ok. Thank you, Tim Griffin

Goodling, Monica

From: Goodling, Monica
Sent: Friday, August 18, 2006 12:09 PM
To: Sampson, Kyle
Subject: Re: Conf Call, re: Tim Griffin

Fyi - to catch you up on the latest here (unless something else has happened this week), scott and I spoke last thurs or fri and this is what's going on...

We have a senator prob, so while wh is intent on nominating, scott thinks we may have a confirmation issue. Also, WH has a personnel issue as tim returns to the states this week and is still on WH payroll. The possible solution I suggested to scott was that we (DOJ) pick him up as a political, examine the BI completed in May pursuant to his WH post, and then install him as an interim. That resolves both the WH personnel issue and gets him into the office he and the WH want him in. I asked Elston to feel out the DAG on bringing Tim into one of the vacant ADAG spots there, just for a short time until we install him in Arkansas. The DAG wanted to look at his resume, and I sent it him before I left. Was going to run this plan by you once I knew the DAG was onboard. If not, I suppose we can look at CRIM, but knowing Tim, my guess is he'd prefer something else given that he was in CRIM in 2001. (Tim knows nothing about my idea for a solution at this point - wanted your signoff, and a home for him, before I called him.)

-----Original Message-----

From: Sampson, Kyle
To: 'SJennings@gwb43.com' <SJennings@gwb43.com>; Goodling, Monica
Sent: Fri Aug 18 11:52:05 2006
Subject: RE: Conf Call, re: Tim Griffin

Tell us when, Scott, and we'll be on it.

-----Original Message-----

From: SJennings@gwb43.com [mailto: SJennings@gwb43.com]
Sent: Friday, August 18, 2006 11:41 AM
To: Sampson, Kyle; Goodling, Monica
Subject: Conf Call, re: Tim Griffin

Can we get a call together on this Monday or Tuesday ... after you are back, Monica?

J. Scott Jennings

Special Assistant to the President and

Deputy Political Director

The White House

Washington D.C. 20502

sjennings@gwb43.com

Office: 202-456-5275

Goodling, Monica

From: Sampson, Kyle
Sent: Friday, August 18, 2006 5:13 PM
To: Goodling, Monica
Subject: RE: Conf Call, re: Tim Griffin

I agree, but don't think it really should matter where we park him here, as AG will appoint him forthwith to be USA. (Is Cummins gone?)

-----Original Message-----

From: Goodling, Monica
Sent: Friday, August 18, 2006 12:09 PM
To: Sampson, Kyle
Subject: Re: Conf Call, re: Tim Griffin

Fyi - to catch you up on the latest here (unless something else has happened this week), scott and I spoke last thurs or fri and this is what's going on...

We have a senator prob, so while wh is intent on nominating, scott thinks we may have a confirmation issue. Also, WH has a personnel issue as tim returns to the states this week and is still on WH payroll. The possible solution I suggested to scott was that we (DOJ) pick him up as a political, examine the BI completed in May pursuant to his WH post, and then install him as an interim. That resolves both the WH personnel issue and gets him into the office he and the WH want him in. I asked Elston to feel out the DAG on bringing Tim into one of the vacant ADAG spots there, just for a short time until we install him in Arkansas. The DAG wanted to look at his resume, and I sent it him before I left. Was going to run this plan by you once I knew the DAG was onboard. If not, I suppose we can look at CRIM, but knowing Tim, my guess is he'd prefer something else given that he was in CRIM in 2001. (Tim knows nothing about my idea for a solution at this point - wanted your signoff, and a home for him, before I called him.)

-----Original Message-----

From: Sampson, Kyle
To: 'SJennings@gwb43.com' <SJennings@gwb43.com>; Goodling, Monica
Sent: Fri Aug 18 11:52:05 2006
Subject: RE: Conf Call, re: Tim Griffin

Tell us when, Scott, and we'll be on it.

-----Original Message-----

From: SJennings@gwb43.com [mailto: SJennings@gwb43.com]
Sent: Friday, August 18, 2006 11:41 AM
To: Sampson, Kyle; Goodling, Monica
Subject: Conf Call, re: Tim Griffin

Can we get a call together on this Monday or Tuesday ... after you are back, Monica?

J. Scott Jennings

Special Assistant to the President and

Deputy Political Director

The White House

Washington D.C. 20502

sjennings@gwb43.com

Office: 202-456-5275

Goodling, Monica

From: Murphy, Sean (USAEO)
Sent: Thursday, August 24, 2006 11:30 AM
To: Goodling, Monica; Nowacki, John (USAEO); Voris, Natalie (USAEO)
Subject: Arkansas Article on Cummins

Attachments: tmp.htm



tmp.htm (80 KB)

The final days
Arkansas Times Staff
Updated: 8/24/2006

U.S. Attorney Bud Cummins of Little Rock says he'll likely be leaving his job in the next few "weeks or months," but almost certainly by the end of the year. He'd earlier told us he didn't intend to serve out the entirety of the Bush administration's second term and that he'd be looking for private sector work.

More newsy, perhaps, is who Cummins' successor might be. Informed sources say one possibility for a White House nomination is Tim Griffin, an Arkansas native who has worked in top jobs at both the Republican National

Committee and the White House on hard-charging political opposition research.

Though Griffin, currently finishing a military obligation, spent one year in Little Rock as an assistant U.S. attorney, his political work would likely get more attention - and Democratic opposition - in the Senate confirmation process. He'd likely have to endure some questioning about his role in massive Republican projects in Florida and elsewhere by which Republicans challenged tens of thousands of absentee votes. Coincidentally, many of those challenged votes were concentrated in black precincts.

If not Griffin, state Rep. Marvin Childers is another Arkansas lawyer whose name has been mentioned by prominent Republicans to serve out Cummins' term.

Sean P. Murphy
Policy Coordinator and Special Assistant to the Director
Executive Office for United States Attorneys
U.S. Department of Justice
950 Pennsylvania Ave. NW Suite 2248
Washington, DC 20530
(202) 353-3137

-----Original Message-----

From: Goodling, Monica
Sent: Thursday, August 24, 2006 11:27 AM
To: Nowacki, John (USAEO); Murphy, Sean (USAEO); Voris, Natalie (USAEO)
Subject: RE: The Morning News

There is apparently a story in the Arkansas Times about Griffin. Please

find it and email. Thanks.

-----Original Message-----

From: Murphy, Sean (USAE0)

Sent: Thursday, August 24, 2006 9:40 AM

To: Goodling, Monica; Voris, Natalie (USAE0); Nowacki, John (USAE0)

Subject: The Morning News

1. Eid Names New First Assistant USA
2. Alaska Gets New US Attorney
3. FBI Investigating Suspected Terrorists
4. Judge Orders DOJ to Investigate Spy Leaks
5. Chicago-area Congressman's Junkett Tied to Terror Group
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7. Sen. Specter Angered at ABA's Rating of 5th Circuit Nominee
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1. Cliff Stricklin Named To Position By New U.S. Attorney Troy Eid
Law Week- Colorado

Troy A. Eid, United States Attorney for the District of Colorado, announced today that he has appointed Cliff Stricklin to serve as First Assistant United States Attorney for the District of Colorado. In addition to his duties as First Assistant, United States Attorney Troy Eid has named Stricklin to be the lead prosecutor in the case of the United States v. Joseph Nacchio. Stricklin, an experienced federal prosecutor and former judge, most recently served on the Enron Task Force where he was one of four attorneys to present evidence in the trial against former Enron executives Ken Lay and Jeff Skilling. He was also the co-lead prosecutor in the securities and accounting fraud case against five executives from Enron's Broadband division.

Prior to joining the Enron Task Force, Stricklin was a state district judge in Dallas, Texas, where for four years he presided over felony criminal cases ranging from fraud and narcotic crimes to capital murder cases. Each of his cases that were appealed has been affirmed at the appellate level. In 2002, his fellow district court judges elected Stricklin to the position of Presiding Judge, a position he held until returning to the Department of Justice.

Stricklin was selected after Eid conducted a nation-wide search to identify his number two prosecutor for the District of Colorado. Eid wanted to find an experienced trial attorney to lead the team prosecuting Joseph Nacchio. He also wanted someone with broad prosecutorial and judicial experience. "I have full confidence in Cliff Stricklin," U.S. Attorney Eid said. "Cliff's extraordinary background, including his work on the Enron Task Force, makes him the ideal leader to handle the Joseph Nacchio case while serving Colorado as First Assistant U.S. Attorney."

U.S. Attorney Eid also announced that Stricklin's prosecution trial team will include Corporate Fraud Trial Attorneys Colleen Conry and Leo Wise from the Department of Justice in Washington, and Assistant United States Attorney James Hearty in Colorado.

"The criminal investigation and subsequent prosecution has been a partnership between the U.S. Attorney's Office in Colorado and the Department of Justice Corporate Fraud Section since its inception. These four experienced federal prosecutors will make a great team as the government prepares for trial," Eid said.

U.S. Attorney Eid also praised Bill Leone's leadership on the Qwest investigation. "Thanks to Bill and his team, the Nacchio case is in

great shape."

Prior to being a state judge, Cliff Stricklin spent eight years working as an Assistant U.S. Attorney with the Eastern District of Texas. He started with the office right out of law school and was immediately thrust into the courtroom trying drug cases. He later moved to general crimes, eventually graduating to complex public corruption and white collar cases.

He has received the Texas Department of Public Safety's highest civilian award given for his service to law enforcement as well as honorary awards from the FBI, the U.S. Customs Service and IBM, Inc. An enthusiastic teacher, Stricklin has shared his experience in the courtroom with other lawyers and students as an instructor at the Justice Department's National Advocacy Center and the Attorney General's Advocacy Institute as well as an adjunct professor at Southern Methodist University's School of Law.

Stricklin is a graduate of Washington & Lee School of Law and Baylor University. In addition to his other experience, Cliff has served as an intelligence analyst with the Drug Enforcement Administration in Washington, DC, as a Special Assistant to the Administrator at the Office of Juvenile Justice and Delinquency Prevention, also in Washington, as a law clerk hired by Rudolph Giuliani in the Securities Fraud Section of the U.S. Attorney's Office for the Southern District of New York, and as a senior attorney with the national law firm of Andrews & Kurth, LLP, in Dallas.

Prosecutors want to keep Nacchio trial in Denver
New Mexico Business Weekly - 12:06 PM MDT Monday
by Bob Mook

<http://www.bizjournals.com/search/bin/search?t=albuquerque&am=albuquerque&q=%22Bob%20Mook%22&f=byline&am=120_days&r=20>

Denver Business Journal

Federal prosecutors in the case against Joseph Nacchio are asking a U.S. District Court judge to keep the trial in Denver, despite claims from Nacchio's lawyers that the former CEO of Qwest Communications International Inc.

</albuquerque/gen/Qwest_Communications_International_Inc_20899.html>

can't get a fair trial in the city.

Nacchio's attorneys earlier this month requested a change of venue, saying he's considered one of the "most reviled figures in recent Denver history."

But prosecutors said the defense's argument for moving the trial relied "almost exclusively" on selective quotes from newspaper articles.

"While press coverage of [Denver, Colo.-based] Qwest and the defendant has not been insubstantial, it has been neither inflammatory nor prejudicial. In fact, the majority of the examples proffered by the defendant are objective, factual and contain no mention of the defendant by name; a good proportion of the coverage is of ordinary court proceedings and motion practice," stated U.S. Attorney Troy Eid in a motion opposing the change of venue.

Eid went on to say a vast majority of potential jurors in the Denver jury division won't consist of former Qwest employees.

The prosecutor also dismissed claims from Nacchio's attorneys that holding the trial in Denver places a significant burden on Nacchio, who lives in New Jersey.

"The defendant is a man of substantial means," Eid stated.

Nacchio is accused of selling \$101 million in stock in 2001 based on inside information that the Baby Bell wouldn't be able to meet revenue targets.

Federal prosecutors say Nacchio and other former Qwest executives perpetrated financial fraud on investors. The company later was forced to restate about \$2.2 billion in revenue.

Robin Szeliga, the former chief financial officer for Qwest, was sentenced July 28 to two years on probation, six months of home detention and a \$250,000 fine for her role in Qwest's accounting

scandal.

Szeliga, who pleaded guilty to one count of insider trading, is expected to be a key witness in the government's case against Nacchio, who was indicted on 42 charges of insider trading in December.

A pretrial hearing for Nacchio is scheduled for Aug. 25.

Qwest Communications (NYSE: Q) provides voice, video and data services to customers in New Mexico and around the globe.

2. Former prosecutor in Pittsburgh gets post in Alaska

By Jason Cato <mailto:jcato@tribweb.com>

TRIBUNE-REVIEW

Thursday, August 24, 2006

Pittsburgh might own a reputation as a frigid place to be in winter, but it's got nothing on the new assignment for longtime federal prosecutor Nelson P. Cohen.

The former assistant U.S. attorney in Pittsburgh has been appointed the U.S. attorney in Alaska. Cohen was appointed by U.S. Attorney General Alberto Gonzales and not President Bush, meaning his appointment is not Senate-approved. He will serve on an indefinite interim basis, filling the seat vacated in 2005 by former U.S. Attorney Tim Burgess after he became a federal judge.

Cohen, 57, of Richland, arrived in Anchorage on Monday, was announced as the new U.S. attorney Tuesday and spent most of Wednesday attending meetings.

He could not be reached for comment.

This will not be Cohen's first experience in the Last Frontier. For 10 years, he was an assistant U.S. attorney in the office he now heads and worked in private practice in Anchorage before coming to the U.S.

Attorney's Office in Pittsburgh in 1987.

Most recently, he served as the deputy criminal division chief in charge of the White Collar Crimes Division for U.S. Attorney Mary Beth Buchanan.

"Nelson Cohen is an exceptional prosecutor and manager," Buchanan said. "He will bring his strong management skills, commitment to justice, and sound judgement to his new position as United States attorney for the district of Alaska."

Cohen is a graduate of the University of Pittsburgh and Duquesne University law school. He also worked as a prosecutor in the Allegheny County District Attorney's Office.

Cohen named new Alaska U.S. Attorney

Associated Press

Alaska has a new U.S. Attorney. The Justice Department Tuesday announced that Nelson Cohen has been appointed to the post for the District of Alaska. He replaces Acting U.S. Attorney Deborah Smith. Under rules of her appointment, she could only serve in the post for 210 days.

Cohen has been the assistant U.S. Attorney for the District of Pennsylvania since 1987. But before he joined that office in Pittsburgh, he practiced law in Alaska for ten years -- both as an assistant U.S. attorney and in private practice. He replaces Tim Burgess, who resigned as U.S. Attorney for the District of Alaska to take a seat on the federal bench in 2005.

3. FBI Investigating Man Who Claimed To Be Planning To Bomb (AP)

AP, August 24, 2006

SPOKANE, Wash. -- An anti-terrorism task force is investigating a man's reported jailhouse claims of ties to al-Qaida and a plan to blow up a state Department of Social and Health Services building.

While in the Spokane County Jail earlier this month, the 18-year-old reportedly told fellow inmates that he also intended to set off a bomb at the upcoming Pig Out in the Park event and set off a second device when police responded, authorities said Wednesday.

Evidence recovered so far after three search warrants were served includes two loaded ammunition clips for an AK-47 semiautomatic rifle and a laptop computer reportedly containing an

al-Qaida training manual, said Norm Brown, a spokesman for the Inland Northwest Joint Terrorism Task Force, which is investigating the case.

The task force includes FBI agents and officers from other agencies. The U.S. attorney's office is reviewing possible charges against the man, currently in custody at Eastern State Hospital where he is undergoing a 90-day mental evaluation as part of an "involuntary commitment," Brown said.

The young man has "denied making terrorist threats," Brown said. Agents also recovered a GPS locator device, maps, a mask and other "survivalist-type" gear, but no bomb-making components or firearms, Brown said.

The man reportedly told county jail inmates he planned to build a fertilizer and fuel oil bomb "just like Timothy McVeigh" and blow up a DSHS office in Spokane, Brown said.

He also "bragged that he had an AK-47," but agents haven't located such a gun, just ammunition for one, Brown said.

"We have not been able to tie him to any known terrorist organizations, the task force spokesman told The Spokesman-Review. "I would describe him as a lone wolf.

It wasn't immediately clear what led to the man's incarceration in the county jail.

Investigators took the threats seriously because the man has traveled to Morocco twice in the last two years, Brown said.

4. Judge Orders Investigation Of Leak In Pro-Israel Spy Case (AP)

By Matthew Barakat, Associated Press

AP, August 24, 2006

ALEXANDRIA, Va. - A federal judge has ordered the Justice Department to investigate how media organizations learned about a criminal probe involving the activities of two pro-Israel lobbyists, who now face trial on charges that they illegally disclosed national defense information.

U.S. District Judge T.S. Ellis III ordered the investigation following complaints by defense lawyers that the government failed to follow proper procedures in obtaining and executing a secret warrant for surveillance of lobbyists Steven Rosen and Keith Weissman.

The indictment against Rosen of Silver Spring, Md., and Weissman of Bethesda, Md., alleges that they conspired to obtain classified reports on issues relevant to American policy, including the al-Qaeda terror network; the bombing of the Khobar Towers dormitory in Saudi Arabia, which killed 19 U.S. Air Force personnel; and U.S. policy in Iran.

Rosen and Weissman, former lobbyists for the American Israel Public Affairs Committee, are accused of sharing the information with reporters and foreign diplomats. No trial date has been set.

Media advocacy groups have long been concerned about the government's prosecution of Rosen and Weissman because the statute used to prosecute them - a World War I-era espionage law - could easily be used to prosecute journalists who break news about classified government programs.

Ellis' decision to order an investigation into how CBS News and other media companies learned of the AIPAC probe in late August of 2004 crystallized that concern.

"I find it hard to fathom why the judge needed to file an order seeking confidential sources" in this case, said Lucy Dalglish, executive director for the Arlington-based Reporters Committee for Freedom of the Press. "We're getting into really dangerous territory."

A CBS News spokesman declined comment Wednesday.

Ellis said in his ruling that a leak would not necessarily taint the government's use of a warrant obtained through the secret Foreign Intelligence Surveillance Court, but he ordered the inquiry anyway.

Defense lawyers have been seeking to suppress evidence obtained from the

surveillance; they argued that the leak is proof that the government failed to follow proper procedures. Ellis, whose written opinion was made public Tuesday, left the door open for defense lawyers to renew their objections based on the results of the inquiry. The Justice Department was ordered to give Ellis a sealed report by Sept. 15.

The Espionage Act allows for prosecution of persons who transmit national defense information to those not entitled to receive it. The case against Rosen and Weissman is the first to apply the law to lobbyists.

U.S. Attorney General Alberto Gonzales has said he believes journalists can be prosecuted for publishing classified information, and an earlier ruling by Ellis in the case on the constitutionality of the Espionage Act also left the door open for prosecutors to charge reporters.

A former Defense Department official, Lawrence A. Franklin, has already pleaded guilty to providing Rosen and Weissman classified defense information. Franklin was sentenced to more than 12 years in prison.

Franklin said he believed the United States was insufficiently concerned about the threat posed by Iran and hoped that leaking information might eventually provoke the National Security Council to take a different course of action.

5. Congressman's Trip Tied To Group U.S. Considers Terrorists (CHIT)

By Andrew Zajac And Mike Dorning

Chicago Tribune, August 24, 2006

WASHINGTON -- Chicago congressman Danny Davis and an aide took a trip to Sri Lanka last year that was paid for by the Tamil Tigers, a group that the U.S. government has designated as a terrorist organization for its use of suicide bombers and child soldiers, law enforcement sources said.

Davis' seven-day trip came under new scrutiny this week following the arrests of 11 supporters of the organization on charges of participating in a broad conspiracy to support the terrorist group through money laundering, arms procurement and bribery of U.S. officials.

The five-term Democratic congressman said he was unaware that the Tigers paid for the trip and on his required congressional disclosure form he reported that the trip was paid for by a Hickory Hills-based Tamil cultural organization, the Federation of Tamil Sangams of North America.

During the visit, Davis spent most of his time in a region controlled by the Liberation Tigers of Tamil Eelam, as the group is formally known, and visited the organization's political headquarters. He also met with a police chief for the region appointed by the Tigers.

The Tamil Tigers is a separatist group that has been fighting since 1983 for an independent state for 3.2 million ethnic Tamils in Sri Lanka, a tear-shaped island nation of 20 million off the southern tip of India. In addition to conventional guerrilla tactics, the group has used terrorist methods, including 200 suicide bombings, in a bloody conflict that has claimed more than 60,000 lives. Though the violence between the government and the separatist group abated during the past several years, it recently surged again, threatening a renewed civil war.

Davis said he believed that the trip, from March 30 to April 5, 2005, was paid for by the Tamil federation, which in accordance with congressional ethics rules sent him a written statement of the travel expenses, more than \$7,000 each for Davis and his aide, Daniel Cantrell. Davis said he knew that the group was "associated" with the Tamil Tigers but did not realize that the trip's costs were covered with funds controlled by the rebel group. "I know who I got the trip from," Davis said. "I don't know if any clandestine group gave them money. All I know is what I saw and was told."

He also said that he had not been contacted by federal investigators in

connection with the trip.

He defended the trip, saying he traveled there at the behest of ethnic Tamils who live in his West Side congressional district so that he could examine charges that the region was not receiving an equitable share of relief funding sent to Sri Lanka in the aftermath of the December 2004 tsunami. Davis has been harshly critical of the Sri Lankan government's treatment of the Tamil minority.

"Since I have an interest in human rights and since I have a tendency to kind of favor the underdog, I went at their request to take a look," Davis said. "I don't regret taking the trip. I have a much better understanding of the situation than prior to going." As recently as this past Saturday, Davis talked in Chicago with a supporter of the Tamil Tigers who was among 11 people arrested on charges of conspiring to aid the rebel group through money laundering, procurement of arms, including surface-to-air missiles, and bribery of public officials.

That Tamil Tiger supporter, Murugesu Vinayagamoorthy, was described in a federal criminal complaint as a high-level operative who served as an intermediary between the Tigers' leaders and foreign backers. The complaint charges that he offered a \$1 million bribe to an undercover FBI agent posing as a State Department official in an attempt to remove the Tamil Tigers' designation as a terrorist organization.

Davis said he first met Vinayagamoorthy, a 57-year-old London physician, at a Tamil cultural event in the Chicago suburbs at which both of them gave speeches "a few years ago." Vinayagamoorthy also participated in several of the meetings that Davis held while visiting Sri Lanka, the congressman said. The Tamil supporter contacted the congressman's office again last week seeking a chance to brief Davis on events in Sri Lanka, where violence between the government and Tamil Tigers has flared anew. Vinayagamoorthy arranged to do so while walking alongside Davis Saturday for 10 blocks during the congressman's annual "Back to School" Parade in Chicago, Davis said.

The criminal complaint against Vinayagamoorthy asserts that he had "direct and frequent contact" with leaders of the rebel group and was "often dispatched" to facilitate Tamil Tiger projects around the world.

Without mentioning Davis or his aide by name, the complaint describes a series of transactions in which Vinayagamoorthy and others charged in the case allegedly laundered \$13,150 in Tamil Tiger funds at the direction of a top guerilla leader to pay for travel of "two individuals" to Tamil-controlled Sri Lanka. The two individuals were Davis and Cantrell, law enforcement officials said.

Another person arrested in the case, Nachimuthu Socrates, was listed as a director in 2004 of the Tamil cultural organization which Davis listed in public disclosure forms as the trip's sponsor, the Federation of Tamil Sangams of North America. Representatives of the federation did not return phone messages on Wednesday.

Davis said he always assumed that the organization had a connection with the Tamil Tigers.

"I knew that they were associated with the Tamil Tigers, yes," he said. Davis has been an outspoken supporter of the Tamil minority in Sri Lanka.

This month, he issued a statement condemning an Aug. 14 Sri Lankan Air Force bombing in Tamil-controlled territory that reportedly killed dozens of girls.

Davis' statement said the facility was an orphanage he had visited during his 2005 trip to Sri Lanka. The government said the site was a former orphanage being used as an LTTE training camp for female recruits.

"We've been engaged," Davis said. "There hasn't been anything clandestine about our position."

Davis has been one of the most prolific travelers in Congress, accepting 47 trips paid for by private groups since 2000. That total ranks Davis 15th among the 535 members of Congress, according to Political Moneyline, a non-partisan watchdog group that compiles data from congressional disclosure forms. The Tamil Tigers were designated by the State Department as a foreign terrorist organization in 1997. As a result, federal law bars providing them funding, arms or other material support. The FBI searched a residence Sunday in Glendale Heights in connection with the Tamil Tiger investigation, according to Ross Rice, a spokesman for the bureau's Chicago office. No arrests were made and no criminal charges have been filed as a result of the raid, Rice said.

6. President Serves Up Cup Of Coffee And Katrina Message (USAT)

By David Jackson

USA Today, August 24, 2006

WASHINGTON - President Bush served coffee to a Hurricane Katrina survivor in the Oval Office on Wednesday, and warned him and others that rebuilding the Gulf Coast will take years. "A one-year anniversary is just that, because it's going to require a long time to help these people rebuild," Bush said after meeting with Rocky Vaccarella of Louisiana. Vaccarella drove a replica FEMA trailer to Washington from St. Bernard Parish as part of a campaign to remind Americans of those who lost their homes to Katrina.

The coffee klatch came as the administration is preparing for next week's anniversary of the hurricane and flooding, which took nearly 1,600 lives, caused more than \$81 billion in damage, and inflicted political pain on the Bush administration. Bush plans to declare a National Day of Remembrance for Aug. 29, the day Katrina struck. Spokeswoman Dana Perino said a proclamation will "honor those who did not survive the fury" of the storm, and "the heroes who rescued so many." The president plans to spend two days in the region. He will be in Mississippi on Monday, meeting with community leaders, touring damaged areas, and speaking about recovery efforts. He spends Tuesday in New Orleans, and events will include a service of prayer and remembrance.

The White House is plotting its post-Katrina strategy as reports criticize aspects of the Katrina recovery. The liberal-leaning Brookings Institution, for example, said there have been "areas of progress," including housing, but "more progress is needed," particularly for renters and low-income residents. Congressional Democrats weighed in with their report, entitled "Broken Promises: The Republican Response To Katrina."

"The response to Hurricane Katrina was disastrous," House Minority Leader Nancy Pelosi said.

Vaccarella had parked his trailer on a street that cuts across the National Mall, in sight of the U.S. Capitol building. An unemployed restaurant supervisor, Vaccarella called the presidential sit-down a "fantastic" experience.

"I just wanted to let the president know, 'please, don't forget about us,' (and) that the rebuilding is taking a while," said Vaccarella, who is making a documentary of his experiences.

Vaccarella, once a Republican candidate in a local election, praised Bush's efforts, at one point telling him, "I wish you had another four years, man." Bush grimaced at the endorsement of a third term, saying, "Wait a minute - "

"It felt like I was talking to the average American," Vaccarella said. "He's definitely a people's president."

Bush Says Katrina Recovery Will Take Time (LAT)

By Johanna Neuman

The Los Angeles Times, August 24, 2006

Washington - President Bush on Wednesday reassured still-struggling victims of Hurricane Katrina that he has not

forgotten them, but warned recovery will not be achieved by the first anniversary of the devastating storm.

"It's a time to remember that people suffered, and it's a time to recommit ourselves to helping them," Bush said after meeting in the Oval Office with Rockey Vaccarella, who lost his home to Katrina. "But I also want people to remember that a oneyear anniversary is just that, because it's going to require a long time to help these people rebuild."

The president discussed Katrina with Vaccarella, 41, of Mereaux, La., who has been traveling the U.S., making a documentary about his road to recovery as he and his family live in a FEMA trailer.

The administration's Gulf Coast recovery coordinator, Donald E. Powell, said during a White House briefing Tuesday that since Katrina slammed into Louisiana and Mississippi on Aug. 29, 2005, only \$44 billion of the \$110 billion in federal money earmarked for rebuilding the region has been spent.

"I have a sense of frustration, I have a sense of urgency all the time," Powell said. Federal funds have begun to reach Mississippi homeowners, he said, but Louisiana has delayed its plans for distribution.

Bush addressed the delay in his remarks Wednesday.

"To the extent that there are still bureaucratic hurdles and the need for the federal government to help eradicate those hurdles, we want to do that," he said.

With midterm congressional elections less than three months away, Democrats are seeking to use the lapses in the government's response to Katrina -- including the vivid images of residents stranded on rooftops or directed to shelters with no food or water -- to sway voters against the Republicans.

In a new report, Senate Minority Leader Harry Reid, D-Nev., and House Minority Leader Nancy Pelosi, D-Calif., who both plan to visit the Gulf region in the coming week, detailed what they described as the Bush administration's failures.

"One year ago, Katrina and Rita taught the American people the terrible lesson that their government was not prepared to protect them," Reid said Wednesday, announcing the report's release.

"Unfortunately, one year after the hurricanes and five years after 9/11, Bush Republicans in Washington still have not taken that lesson to heart."

The report, titled "Broken Promises," says that thousands of families still are waiting for trailers from the Federal Emergency Management Agency; that an estimated 11 percent of the \$19 billion spent by FEMA -- or about \$2 billion -- has been wasted by fraud and abuse; and that 80 percent of Gulf Coast businesses with approved Small Business Administration disaster loans are still waiting for the money.

In a separate report on wasteful procurement spending, two California Democrats, Reps. Henry Waxman and Dennis Cardoza, plan to announce on Thursday the formation of a "truth squad" to expose fraud and abuse in Katrina contract awards.

Meanwhile, Vaccarella of Louisiana seemed to enjoy his "Forrest Gump" moment.

"You know, it's really amazing when a small man like me from St. Bernard Parish can meet the president of the United States," he said. "The president is a people person. I knew that from the beginning."

Bush had equally kind words for his visitor.

"Rock is a plain-spoken guy, he's the kind of fellow I feel comfortable talking to," said the president. "I told him that I understand that there's people down there that still need help. And I told him the federal government will work with the state and local authorities to get the help to them as quickly as possible."

Later, White House deputy press secretary Dana Perino said that when the invitation to meet with Bush was extended to Vaccarella, White House staffers did not know that he was a Republican who had once run for local office. The exchange

between the president and Vaccarella ended as if the two were enjoying a convivial evening in a neighborhood bar.

"You're a good man, Rocky," said Bush, slapping Vaccarella on the back. "You are too," Vaccarella responded, slapping the president on the back in return. "Thanks a bunch."

As he walked along the White House driveway, Vaccarella talked with reporters, urging other Katrina survivors to "get rolling" and see the glass as half-full instead of half-empty.

"We get knocked down, we get back up, we're Americans," he said. "We got hit, we just need to get back on our feet and get rolling."

Then Vaccarella left, carrying a goody bag that he said contained a tie pin, a bookmark and other "tokens" from the president.

7. ABA Rating For 5th Circuit Nominee Angers Specter (LAW)

By T.r. Goldman, Legal Times

Legal Times, August 24, 2006

The American Bar Association's unanimous "not qualified" rating for Michael Wallace, the Mississippi lawyer nominated to the 5th U.S. Circuit Court of Appeals, has sent Senate Judiciary Committee Chairman Arlen Specter, R-Pa., into a tizzy.

In an Aug. 7 letter, Specter demanded that the ABA "immediately revoke its 'Not Qualified' rating ... and begin a new review process." Such unanimous "not qualified" ratings are extremely rare, but the ABA, in a written summary of its decision, noted that it arrived at its conclusion after interviewing 69 lawyers and judges. While applauding Wallace's professional credentials -- Harvard College, the University of Virginia School of Law, clerk to then-Associate Justice William Rehnquist -- and his integrity, the ABA assailed his judicial temperament, including allegations of racial bias.

"A large number of minority lawyers stated that Mr. Wallace has on occasion been particularly disrespectful to them and often did not treat them as equals or peers in the profession," the report said.

Meanwhile, five controversial circuit court nominees, including Wallace, Pentagon general counsel William Haynes II, and Terrence Boyle, were sent back to the White House in accordance with a Senate rule that allows nominations to be returned if the Senate will be in recess for more than 30 days.

The decision by Senate Majority Leader Bill Frist, R-Tenn., puts the ball back in the White House's court, forcing the president to formally resubmit their names to the Senate if he wishes to pursue the nominations.

8. Sen. George Allen Gives Direct Apology (AP-Y)

By Bob Lewis, Associated Press Writer

AP, August 24, 2006

An obscure word played for laughs from a mostly white crowd at the expense of a man of Indian descent clouds what has been a bright political career for Sen. George Allen, including any White House plans.

The Republican, seeking a second term as he explores a 2008 presidential run, apologized directly Wednesday to the Democratic aide he targeted, then joined President Bush for a private fundraiser in the Virginia suburbs of Washington.

But the damage has been done and it will haunt Allen for a while, said Merle Black, a political scientist at Emory University in Atlanta and a specialist in presidential and congressional races.

"Clearly this has damaged his presidential aspirations," Black said in a telephone interview. "It just raises questions about his judgment and how sincere he is in how he deals with these kinds of issues."

At an Aug. 11 rally with about 100 supporters at Breaks, Va., near the Kentucky border, Allen singled out S.R. Sidarth, a volunteer who was tracking Allen and videotaping his campaign events for